

The Clash Within Civilisations: Islam and the Accommodation of Plurality

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Veröffentlichungsversion / Published Version
Arbeitspapier / working paper

Empfohlene Zitierung / Suggested Citation:

Trautner, B. J. (1999). *The Clash Within Civilisations: Islam and the Accommodation of Plurality*. (InIIS-Arbeitspapiere, 13). Bremen: Universität Bremen, FB 08 Sozialwissenschaften, Institut für Interkulturelle und Internationale Studien (InIIS). <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-67189-3>

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INSTITUT FÜR INTERKULTURELLE UND INTERNATIONALE STUDIEN

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**THE CLASH *WITHIN* CIVILISATIONS: ISLAM AND THE
ACCOMMODATION OF PLURALITY**

InlIS-Arbeitspapier Nr. 13/99



Universität Bremen

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ACCOMMODATION OF PLURALITY**

EMPIRICAL EVIDENCE AND CONTEMPORARY REFORMIST APPROACHES

InIIS-Arbeitspapier Nr. 13/99

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Abstract (dt. Zusammenfassung am Ende)

The talk of an impending 'Clash of Civilisations' conceives of civilisations as a) homogenous and b) distinct entities with regard to their respective political worldviews. Particularly Islam or more precisely, Muslim civilisation is presumably homogenous. Its civilisational values are held incompatible with 'Western' values thus leading to an inevitable confrontation.

This paper inquires into the mode of the accommodation of plurality in four Muslim societies a) *de facto* and b) how it is ideally conceived of. In both respects, the assumption of homogeneity fails even for the Arab-Iranian core area of the Muslim world. The thesis of a 'Clash of Civilisation' is thus challenged by the counter-thesis of a 'Clash within Civilisations'. It is validated on two levels of analysis:

- The scope of constitutional models ranges from secular Tunisia to syntheses based on such diverse traditions like Morocco and Saudi-Arabia to the modernist synthesis of Iran. Common to them all is, however, that they use repressive means to control plurality. In all those countries, the freedom of speech is severely limited with regard to issues which are pivotal to the respective political system. It is therefore justified to scrutinise the plausibility of contemporary reformist approaches against precisely this empirical background. These approaches also display a fair degree of substantial heterogeneity:
- The range of contemporary Muslim political discourse extends from extremely *conflationist* attitudes, which claim a congruence of the *fanum*/sacred and *profanum*/profane sphere in public life—on the one side, to extremely "*de-conflationist*" attitudes which are based on a separation of *civitas mundi* from *civitas dei*, the separation of religion and the state, on the other. The reformist attitudes toward traditional conceptualisations of plurality investigated in this paper, are for the most part located in the middle of this discursive spectrum. Thus, the projects investigated here are not holistic in the sense that they are either 'fundamentalist' or 'secular/modernist'. On the contrary, as different as the respective projects with regard to their disciplinary and methodological approach are, they have in common an 'anti-essentialist' outlook, i.e. they reflect the specific historical legacy and contemporary experiences of the authors in the respective country of origin Morocco, Tunisia, and Iran.

The results of this paper stand in contrast to Western and non-Western interpretations of 'political Islam' as necessarily 'fundamentalist' and the subsequent hypostatisation of secularism to political modernity *per se*. Reformist intellectuals such as Moroccan al-Jābrī or Iranian 'A.-K. Surūsh, and even political actors like Tunisian R. al-Ghanūshī establish their projects on a critical comprehension of both the historical tradition and actual modernity, i.e. on the acknowledgement of Islam constantly being instrumentalised politically and secular

constitutional models being abused for the legitimisation of authoritarian rule. Such differentiated projects offer a more realistic opportunity to prevent the escalation of the real Clash, namely the one within Civilisations, and for the constructive accommodation of plurality than the extremist slogans of "*Islām 'huw al-ḥall*"/Islam the solution" or the mirror-reflected secular battle-cry for "*Tajfīf al-yanābī' al-uṣūliyah*/draining the fundamentalists' sources":

- Both, the high degree of differentiation and of abstraction makes those projects evade the highly ideologised interpretations of specific Islamic notions. Based on the latter, dichotomised conceptions more often than not represent combat positions in day-to-day politics. Projects of the kind suggested by al-Jābrī, al-Ghanūshī, and Surūsh, however, reconfigure the problematique of authenticity in whose context political innovation and social transformation are blamed for 'westernising' one's own 'authentic' (Islamic/Arab/Iranian) culture.
- Equipped with the critique of tradition and modernity those reformist approaches do not abandon the semantic field of Islamic tradition. More significantly, there are substantial reinterpretations to be discovered with regard to the historical conceptualisations of plurality such as "*tawḥīd*/oneness of Allāh", "*ijtihād*/individual reasoning", "*naṣīḥah*/sincere advice" and "*shūrā*/consultation". The main thrust in the reinterpretation of these traditional concepts is to broaden political liberties of the ruled. That is, to extend participation and freedom of speech both beyond the limits of orthodox interpretation of the mentioned concepts and beyond the *de facto* confines set up by the political systems in the contemporary Muslim world.

Zusammenfassung

Die Rede von einem bevorstehenden 'Clash of Civilisations' beruht auf der konzeptionellen Annahme, Kulturkreise seien in politisch-weltanschaulicher Hinsicht a) homogen und b) von anderen Kulturkreisen abgegrenzt. Eine solche Homogenität wird insbesondere für den islamischen Kulturkreis postuliert. Darauf aufbauend wird behauptet, seine zivilisatorischen Werte seien mit denen 'des' Westens unvereinbar. Diese Unvereinbarkeit führe letztlich zum 'Clash'.

Die vorliegende Arbeit untersucht, wie mit Pluralität de facto umgegangen wird und beleuchtet Vorstellungen vom idealen Umgang mit ihr. Sie zeigt, daß die Annahme einer Homogenität schon im arabisch-iranischen Kernraum des islamischen Kulturkreises dem tatsächlichen Sachverhalt keineswegs entspricht. Der These vom 'Clash of Civilisations' stellt diese Arbeit die Gegenthese eines 'Clash within Civilisations' entgegen; ihre Überprüfung geschieht auf zwei Ebenen:

- Das Spektrum der Verfassungsmodelle reicht vom säkularen Tunesien über Synthesen auf traditioneller Basis, aber in unterschiedlicher Ausformung, in Marokko und Saudi-Arabien, bis hin zur modernistischen Synthese in Iran. Gemeinsam ist allen untersuchten politischen Systemen, daß sie, unabhängig vom Grad der Säkularität, Pluralität repressiv behandeln. Anlaß genug, zeitgenössische Reformansätze auf ihre Plausibilität vor diesem Hintergrund zu untersuchen.

Auch diese Ansätze zeigen ein hohes Maß an inhaltlicher Heterogenität

- Das Spektrum des zeitgenössischen muslimischen politischen Diskurses reicht von der extrem *conflationistischen* Perspektive, d.h. vom In-eins-denken der weltlichen und der sakralen Sphäre (zum Begriff: Salvatore 1997), bis zu ihrem extremen *deconflationistischen* Gegensatz, der strikten Trennung von *fanum* und *profanum* im öffentlichen Raum. Die reformistischen Auslegungen der hier untersuchten, ursprünglich traditionellen Konzepte, die für die Bearbeitung von Pluralität relevant sind, liegen überwiegend auf dem mittleren Teil dieses Spektrums. Die z.T. nur im weitesten Sinne politischen Projekte der Reformisten sind also nicht in dem Sinne holistisch, als sie entweder durchgängig als 'säkular' oder als 'fundamentalistisch' bezeichnet werden könnten. Im Gegenteil, so sehr sich die Projekte hinsichtlich ihres disziplinären und methodischen Ansatzes auch unterscheiden, gemeinsam ist ihnen, daß sie 'anti-essentialistisch' sind, d.h. sie widerspiegeln den konkreten historischen und zeitgenössischen Erfahrungshorizont der Autoren gemäß ihrer Herkunftsländer Marokko, Tunesien und Iran.

Über die Eigen- und Fremddeutungen des 'politischen Islam' als zwingend 'fundamentalistisch' und die daraus folgende Hypostasierung 'des' Säkularismus zu der politischen 'Moderne' weist nun die Tatsache hinaus, daß wichtige Intellektuelle, wie der Marokkaner M. A. al-Jābrī oder der Iraner 'A.-K. Surūsh, und sogar politische Akteure wie der Tunesier R. al-Ghanūshī ihre Projekte auf einem kritischen Verständnis jeweils beider Pole, sowohl der historisch konkreten Tradition als auch der Moderne, aufbauen, d.h. auf dem Wissen und um die politische Instrumentalisierung von Islam und um den Mißbrauch säkularer Staatsformen zur Legitimierung von autoritärer Herrschaft. Soll nun der reale 'Clash within Civilisations' verhindert werden, bieten solche differenzierten Projekte realere Chancen für einen konstruktiven Umgang mit Pluralität als die extremistischen Ansätze entlang der Parole '*Islām 'huw al-ḥall* / Islam ist die Lösung' oder (spiegelbildlich) gemäß des säkularistischen Kampfrufes nach '*Tajfīf al-yanābī al-uṣūliyah* / Trockenlegung der fundamentalistischen Quellen'.

- Durch den hohen Grad sowohl an Differenzierung als auch an Abstraktion sind solche Reformansätze den hoch polarisierten Begriffs-, Geschichts- und Gegenwartsdeutungen entzogen, die die häufig genug real beobachtbaren Kampfpositionen im politischen Geschehen vor Ort bilden. Projekte der Art, wie sie al-Jābrī, al-Ghanūshī oder 'A.-K. Surūsh vorschlagen, konfigurieren indessen auch die sog. 'Authentizitäts-Problematik' neu, in deren Kontext sich jede politische Innovation oder soziale Veränderung dem Vorwurf ausgesetzt sieht, sie 'verwestliche' die eigene, 'authentische' (islamische, arabische oder iranische) Kultur.
- Dergestalt ausgerüstet mit der Kritik an Tradition und Moderne, verlassen die Reformansätze auf den ersten Blick das semantische Feld der islamischen Tradition nicht. Es werden aber bedeutende inhaltliche Neubestimmungen der hier untersuchten historischen Konzeptualisierungen von Pluralität vorgenommen, von Begriffen wie *tawḥīd*/Einheit Gottes, *ijtihād*/individuelles Bemühen um eine gerechte Lösung, *naṣīḥah*/Ermahnung und *shūrā*/Konsultation. Diese Neubestimmungen begründen insgesamt eine breitere politische Mitsprache der Regierten. Damit liegen bilden Bausteine eines zeitgemäßen Gegenprojekts vor, das gerichtet ist gegen die autoritäre Restriktion säkular begründeter politischer Mitsprache und Meinungsfreiheit in den zeitgenössischen politischen Systemen der islamischen Welt.

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Zusammenfassung

Introduction¹

The 'Clash of Civilisations' is not only imminent but it is already taking place. Contrary to general assumptions, however, for the most part the real clash is not taking place between distinct 'civilisations' or cultural entities ('Kulturkreise') but within each of them. Islam or rather, Muslim civilisation is one—arguably the most 'prominent'—case in point for the struggle with plurality.²

"Plurality" first of all denotes the general condition of most contemporary societies in the world. As for the empirical part of the paper, the notion of plurality shall not imply a normative predisposition toward the praise of "pluralism" as a value *sui generis*. "Plurality" will, however, acquire additional meaning in the theoretical second part of the paper.

In the first part, "plurality" denotes the empirical observation of diverging opinions, values, beliefs and interests within contemporary groups, societies, and states. In contrast to traditional societies, conflict over these divergences surpasses the limits of even the most general frame of common reference—be it the religious community, the nation etc. The main question here is whether these divergences are being dealt with peacefully or not, by suppression or by accommodation, by indifference toward public virtues or by public negotiation of morality. The problem is lucidly exhibited by historian M. Talbi (Tunis):

"Nous allons vers un pluralisme universel qu'il nous faut penser et que l'on doit apprendre à gérer." The main target is thus: "Tout homme doit accepter le pluralisme, c'est-à-dire la cohabitation pacifique avec autrui sur la base du droit à la différence." (1998:110, 113f)

Today, the most important pluralist challenge is that of the nominally 'secular' public order being questioned by both ever larger and ever more militant groups in Muslim society. This, of course, is only comprehensible against the background of a rather negative balance sheet of the secular project in Muslim societies.

In this paper I will argue that the imposition of nationalist, socialist and (to a lesser extent and only recently) liberal secular political systems on Muslim societies has failed to create peaceful political cultures in general and in the long-run, i.e. since the abolition of the caliphate in 1924 up to today. This is mainly due to three inter-linked factors:

- The strong refutation by secular regimes of the most demands for public recognition of Muslim values or even basic religious ordinances as a public code of conduct in public space.
- Against the background of serious development-crises and its well known consequences (rural exodus, urbanisation, unemployment) gradually more and more segments of society became politicised. An anti-secular, though not in always militant counter-intelligentsia emerged. Arguably following Gramsci's model of first attaining ideological

¹ In order to facilitate the access to references from the World Wide Web, an online-version of this paper with the relevant URLs as operative hyperlinks is available at <<http://www-user.uni-bremen.de/~bjtraut/clash>>. I am indebted to J. Momtāzī and to H. Msehlī for invaluable advice on translating tricky bits from the Persian and Arabic. I received valuable comments on the Iranian case study from R. Haag-Higuchi/Bamberg University.

² In addition to the case of Islam, on the Chinese, Buddhist and the Hindu cases from the perspective of intercultural philosophy, cf. Senghaas (1998 German, 1999 augmented English version).

superiority before entering in the political arena,³ this intelligentsia eventually also gained political influence. Islamist ideology attracted attention from those parts of society that so far either had been marginalised (Iran, Algeria, Indonesia). Alternatively, it attracted those, who had merely been instrumentalised against the threat from the political left (Egypt, Turkey) by secularist élites. In any case, this resulted in the establishment of an anti-(or, chronologically: post-) secularist counter public ("Gegenöffentlichkeit") or counter-culture.⁴

- The very process of secularisation "from above" incited or at least enhanced the ideologisation of political conflict over the question of modernisation. Secularism's potentially appeasing effect on ideological conflict was thus reversed into that of a catalyst for the eruption of antagonisms into open conflict.

Only as the failure of implementing the secularist projects in Muslim societies became obvious and resulted in a material threat to the power of the ruling élites, the latter more or less openly bowed to anti-secularist movements—according to the respective power constellations to various degrees, and at different stages. The results were ambivalent: On the whole, by admitting religious parties to elections or by partially accepting *sharīʿah* alongside secular law, the ideological spectrum within the respective society is represented more accurately in the 'official' political process. For specific groups, however, this transformation has resulted in an adverse effect, like certain *sharīʿah*-stipulations in family law have discriminatory effects on women or *sharīʿah*-stipulations in penal law for criminal offenders (*ḥadd*-penalties).

The operation of half-heartedly bowing to anti-secularist demands defused political tension and relieved the pressure on ruling élites only for a short term. The (re-)introduction of Islamic law mostly having lacked adaptation to contemporary times, the backlash did not wait for long. As a result, de-secularising political systems end up with the very same problems of accommodating plurality as they did when they were more secular.

Not even synthetic political systems have escaped the dilemma: neither traditionalist syntheses of secular and pre-secular constitutional orders (Morocco, Saudi-Arabia), nor modernist ones (Iran) have produced convincing models for a reconciliation of religious legitimacy of government on the one hand and political pluralism, on the other.

This clearly establishes the need for innovation in the field of political and legal theory. Contemporary projects overcoming secularist ideology and the deadlocks of both Islamic orthodoxy and Muslim fundamentalism will be presented in the second part of the paper. At this stage, the notion of 'plurality' acquires a fuller meaning, not merely denoting the subject—but in addition, the mode of theoretical deliberation within contemporary Muslim political discourse: It will become clear that there exists a variety of approaches that differ from each other in various dimensions. This *plurality* of political thought concerning contemporary problems of Muslim societies clearly surpasses the popular analytical dichotomisations of 'secular' vs. 'fundamentalist' and 'authentic' vs. 'imported'. If any at all, alternative categories of conceptualisation will be applied here.

³ Cf. al-Afīf al-Akhḍar: *Tajfīf al-yanābīʿ al-uṣūliyah* (sic! "Draining of the Fundamentalist's Sources...") in: *al-Ḥayāt* (London) November 11th, 1997.

⁴ Ben Achour (1993:256)

The last part of the paper endeavours an evaluation of the said approaches with regard to their potential contribution in dealing with plurality of against the background of the empirical overlook.

1) Empirical Evidence

1.1) Methodology

Today, the confrontation between secular and anti-secular forces displays a spectrum from the symbolical issue of women carrying the veil in public space to the discussion on the applicability of Islamic revealed law, *ash-sharī'ah*, in politics and everyday life. The means of confrontation reach from exile opposition (Tunisia, Saudi Arabia) to armed insurgency (Algeria) or civil war (Yemen). Outright political participation of or government by explicitly anti-secularist groups is a rare phenomenon (Jordan for the former, Iran and Afghanistan for the latter).

1.1.1) Hypothesis, related findings and approach

The main hypothesis carrying through the empirical part of the paper is that successful accommodation of plurality is by and large independent of the degree to which political systems in the Middle East and North Africa are formally, i.e. mainly with regard to their constitutional foundations, secularised.

Apparently, this assumption runs counter conventional wisdom. This, however, is mainly due to a different approach. The prevailing approach is by way of inquiry into the compatibility of "Islam" with whatever notion of (mostly Western-style, i.e. parliamentary) "democracy". To no one's real surprise, the results mostly confirm a negative association between the two.⁵ Somewhat more relevant to the subject of this paper is the empirical finding (on a world-wide scale) of a positive association between the accommodation of plurality in terms of governments' respect for human and civil rights on the one side, and the relevant constitutional "promises" to the citizens on the other.⁶

"Culture" in general, i.e. in terms of states belonging to either "the West" or to various specific—religiously, linguistically and/or regionally defined—"civilisations" (Huntington 1996) plays a role only with regard to governments' respect for civil rights (participatory rights), not for the "core" human rights. A significant negative relationship was empirically established between the former on the one hand, and all non-Western civilisations (including the "Islamic" one) on the other.⁷

While the former approach neglects the cultural dimensions of the respective constitutional foundations, the latter, culturalist approach does not differentiate the varying measure to

⁵ Cf. Abdelwahhab al-Affendi: The 'Democratic Deficit' in the Muslim World. Paper presented to the 'Seminar on Islamism, Pluralism and Civil Society' International Forum for Islamic Dialogue (Islam21)/London on April 23rd, 1999 <http://www.islam21.org/main/23apr_affendi2.htm>, Binder (1998), Midlarsky (1998), Sadiki (1998), Vanhanen (1997:117-27), Esposito/Voll (1996), special issue of Journal of Democracy 7 (1996) 2 <http://muse.jhu.edu/journals/journal_of_democracy/toc/jodv007.html#v007.2>.

⁶ Most conducive for the respect of civil and human rights turned out to be the reference to a) the freedom of the press, and b) the mentioning of emergency rules in the constitution, cf. Davenport (1996:627-54), I owe this reference to A. Liese.

⁷ Cf. Hamm (1997:31-35), I owe the reference to A. Liese.

which constitutions and subordinate law reflect local cultural traditions at all.

In order to fill this gap, my point of reference is precisely the degree of secularisation political systems are conceived by, i.e. the extent to which constitutional theory is designed from non-secular sources, in particular from Muslim legal theory. Now, if successful accommodation of political plurality (legal reality) is empirically not in the first place dependent on the secular character of the respective political project, then one of the major arguments fails against the formulation of those Muslim modernist projects which aim at overcoming secularist ideology. Some of those contemporary political projects will be presented in the second part of the paper.

1.1.2) Choice of indicators and cases

Indicators as to the extent of secularisation

While a minimum of reference to revelation seems imperative for political legitimacy even in the most secular systems (Tunisia's *religion de l'Etat*), 'Islam' or more specifically, revealed law, *ash-sharī'ah*, is referred to in order to legitimise both, 'traditional' government (Morocco's *bay'ah* to the king) and opposition's claims for political participation (demand for the establishment of a parliamentary body, *majlis ash-shūrā* in Saudi-Arabia).

The status and application of religious law, i.e. references made to *sharī'ah* primarily in constitutional, but also in family and penal law may be regarded as the strongest indicators as to the extent of secularisation of the respective political systems. Mere labels invoking religious connotations of institutions or offices (cf. "Islamic Republic", President as "*amīr al-mu'minīn*/guide of the believers") are less reliable but may still be indicative at least with respect to the self-image of the ruling élites.

A second indicator covers the degree to which political parties with anti-secular agenda (or with an explicitly secular agenda in non-secular political systems) are in legal terms able to participate in political life .

Since these indicators are expected to significantly vary over time, a chronological dimension is included in the analyses.

Indicators for the accommodation of plurality

As to the question of whether plurality is successfully accommodated or not, indicators include the existence of armed opposition, occurrence of violent conflict, and documented human and civil rights violations from the side of the governments such as limitations on the freedom of expression, and on political participation. Sources are reports provided by international⁸, regional⁹ and the respective national human rights organisations, and political opposition groups.

⁸ E.g. Amnesty International, Human Rights Watch, Freedom House, Derechos.

⁹ E.g. Le Maghreb des droits de l'Homme <<http://www.maghreb-ddh.sgdg.org/index.html>> mirror-sited at the Réseau Associatif et Syndical (Paris), <<http://www.ras.eu.org/maghreb-ddh/>>.

1.2) Case Studies

The empirical overlook includes Tunisia as one of the most thoroughly secularised political systems in the Muslim world, Saudi Arabia and Morocco as two rather variant cases for a traditionalist synthesis, and Iran as a modernist synthesis of secular and religious political thought and practice.

Evidently, the extent of secularity of a political system is more difficult to determine in the case of a synthesis. The more so, if this synthesis, as in the case of Iran, is not based on fragments of secular or, more specifically Western political theory on the one side, and a mere continuation of Muslim orthodox religious tradition on the other. The discontinuity of the religious tradition by a paradigmatic transformation of orthodox political and legal thought makes the modernist synthesis in the case of Iran difficult to assess—and also rather lengthy, compared to the other three cases. Other factors must be kept in mind that make Iran a special case apart from the others, and thus limit the comparability with respect to the dependent variable, accommodation of plurality. The most significant dynamic anomalies lie in the fact of Iran having undergone a popular revolution (1979), and having been exposed to an international war (1980-88). Structural variance occurs in Iran's high ethnic diversity, and the population's predominantly Shī'ī denomination (compared to the predominantly Sunnī denomination in the other three cases). All specificities of the case notwithstanding, Iran has been cited as the most pertinent example for the "Failure of Political Islam" (Roy 1992) in general. On the other hand, some of the concepts that will be referred to in chapter II of the paper as pivotal notions of the current Muslim reformist discourse had been implemented in the Iranian constitutional system. It is therefore indeed justified to take a closer look into this case than into the others.

1.2.1) Traditionalist Synthesis I: Morocco

The political system of the constitutional "Kingdom of Morocco" (*al-mamlakah al-maghribiyah*) may be classified as a synthesis of secular and traditional elements. In contrast to other Muslim and especially Arab countries, Morocco only came under indirect French (mandate) rule and thus evaded thorough colonisation by Western powers. Secularist state ideology was never officially propagated by the rulers. On the contrary, nominally, the sovereign derives its legitimacy from his claim on being a descendant from the prophet's family. On this basis, and on the basis of the annually renewed traditional oath of *bay'ah*/tribute by the subjects¹⁰, King Ḥassan II claims the office of *amīr al-mu'minīn*/leader of the believers. Article 19 of the constitution prescribes the functions of the office as follows:¹¹

"The King, "Amir Al-Muminin"(Commander of the Faithful), shall be the Supreme Representative of the Nation and the Symbol of the unity thereof. He shall be the

¹⁰ According to the king, the oath of allegiance represents the basis of national consensus—by mutually commitment: "I am just as under obligation to my subjects as they are toward me. Simultaneously, I am their subordinate and their King..." cf. his interview with E. Laurent in: "La mémoire d'un roi" éd. Plon 1993.

¹¹ Cf. the 1996 (amended) constitution from the official website of the Ministry of Communication <http://www.mincom.gov.ma/english/generalities/state_st/constitution.htm> (inoperative at time of print).

guarantor of the perpetuation and the continuity of the State. As Defender of the Faith, He shall ensure the respect for the Constitution. He shall be the Protector of the rights and liberties of the citizens, social groups and organisations. The King shall be the guarantor of the independence of the Nation and the territorial integrity of the Kingdom within all its rightful boundaries."

De facto, while multiple political parties legally exist, all of them are pro-monarchist, and the king retains the last veto power in all political questions. So far, the ruler has been able to play a *divide et impera*-game with the party system thus rather sustaining the *clientele*-system (co-optation of party leaders in government) as a continuation of the traditional (pre-colonial) *makhzan*-principle of a—however limited autonomous—regional rule.¹² Since the king's power is pre-constitutional, it is neither theoretically limited by the constitution,¹³ nor does the formal division of power *de facto* restrict the king's rule (exerted by the Ministry of the Interior).

Although Islam is the religion of the state according to art. 6, the constitution makes no explicit reference to Islamic law, the *sharī'ah*. Like in most other Muslim countries, family- and personal status-law are heavily influenced by *sharī'ah*.¹⁴ One example is the legality of polygyny—like in all Arab countries (except for Tunisia). Recent efforts to modernise family- and personal status-law, incited fierce protests from Islamist groups like *rābiṭah al-mustaqbal al-islāmī*/League of the Islamic Future.¹⁵ The latter claims the implementation of *sharī'ah* as the most important source of all legislation. In general, Islamist groups gained influence for the most part from the early 1990ies onward and mainly among students. Islamist groups also participated in a public hunger revolt in 1984 and in a general strike in 1990.

The existing five dozen unions, associations, and groups, about 30 of whom may be considered 'Islamist', are neither legal nor strictly illegal. In the case of the group *al-islāh wa 'l-tajdīd*/Reform and Renovation of 'Abdallāh Binkirān, the license as a political party was denied in 1997. As a valve for this moderate Islamist group's pressure, however, they were endorsed to send members to a board of a barely existing, but legal party. As for the earlier, more fundamental and anti-monarchist Islamist opposition, that of 'Abd as-Salām Yāsīn's *al-jamā'at 'l-'adl wa 'l-iḥsān*/Association for Justice and Welfare (officially dissolved in 1989) and its journal *al-jamā'ah*,¹⁶ government repression went as far as to put the person under house arrest (from 1989 until 1997). Like the *rābiṭah*, it claims the introduction of *sharī'ah* into the legal system of the state. Similar to handling the legal political parties, the ruler carries a twin

¹² The persistence of the *makhzan*-principle as the dominant feature of contemporary political culture has recently been criticised in the conference organised by the Moroccan Association de défense des droits de l'Homme, February 2nd, 1999: "...le dialogue [politique, BJT] est perverti au Maroc, dans la mesure où le Makhzen impose à l'opposition que les propositions de cette dernière doivent avoir son aval (celui du Makhzen [i.e. du roi, dans ce contexte, BJT]) quant au contenu et à leur forme, avant de les formuler," cf. <<http://www.maghreb-ddh.sgdg.org/actualite/zaazaa2.html>>.

¹³ Cf. Article 100 [Restrictions of Constitutional Amendment]: "The monarchic form of the State as well as the provisions relating to the Islamic religion cannot be the object of a constitutional revision."

¹⁴ Cf. Hegasy (1997:63).

¹⁵ Led by law professor A. ar-Raysūnī.

¹⁶ Cf. the journal's electronic edition <<http://www.aljamaareview.com/>> and particularly the fundamental critique of King's rule in Yāsīn's letter to Ḥasan II in *al-Islām aw aṭ-ṭoufān* ("Islam or the Deluge, 1974") in <<http://www.aljamaareview.com/TOUFANE/TOUFAN01.HTM>>. On Yāsīn's discourse on political pluralism cf. Shahin (1996:167-86). One of the most serious constraints to achieving broad popularity is the fact, that Yāsīn's movement incorporates *ṣūfī*-(mystical) elements, which are rather foreign to the Moroccan custom, according to J. Gould in his lecture to the BRISMES Annual Conference, Selly Oaks, July 5th, 1998.

strategy of repression on the one side, and integration, even encouragement on the other (like in Tunisia and Egypt, Islamist groups were funded in the '80ies against the threat from the political left). Several independent national human rights organisations were founded since the end of the 80ies, a national human rights charter was established in 1990.¹⁷ In 1993, an independent forum was founded for the scholarly discussion of the relevance of Islamic ethics for democracy in Northern African public space.¹⁸

To sum up, the existence of political prisoners, especially those from Islamist background,¹⁹ cannot be denied. Massive state interference occurs as soon as the constitutionally stipulated "opinions expressed may be injurious to the monarchical system and the religion of Islam or derogatory to the respect owed the king and the system of state religion."²⁰ A further, *de facto* "taboo-issue" is the status of the Western Sahara as an integral part of Morocco. Thus, essentially within the limits of the (already restrictive) constitution, human and civil rights are respected. Compared to the amount of political violence in other North African countries, the system of *Ḥassanisme* (Faath) managed political plurality rather smoothly.²¹ With the recent demise of Ḥassan, prospects for the transformation of the political system into a constitutional monarchy and for an increase of respect for basic human rights such as the freedom of speech are promising. Ḥassan's successor, Muḥammad VI, is reportedly inclined to follow the Spanish model of King Juan Carlos as the guarantor for the transformation from Franco's dictatorship to democracy.

One of the most innovative and influential theorist of social and political reform in Morocco is the philosopher Muḥammad 'Abd al-Jābrī. Some aspects of his approach toward an authentic modernity and particularly toward democratisation of Arab/Muslim society will be discussed in the second part of the paper (2.3).

¹⁷ For a French translation cf. Charte nationale des droits de l'homme/Maroc <<http://www.maghreb-ddh.sgdg.org/textes/charte-maroc.html>> established (among others) by the Organisation Marocaine des Droits Humains <<http://www.maghrebnet.net.ma/omdh/intro.htm>>. Cf. also the Comité de défense des droits humains <<http://www.ras.eu.org/maghreb-ddh/actualite/cddh.html>> and various women's rights organisations cf. Fadéla Sebtī's collection <<http://www.techno.net.ma/femmes/associat.htm>>.

¹⁸ Two major topics are dealt with in various conferences: "Islamic Ethics and the Foundations of Democracy" <http://www.ned.org:80/page_3/Prologues/program1.html> and "An Open Dialogue on Democracy and its Relevance to Muslim Societies" <http://www.ned.org:80/page_3/Prologues/program2.html>, the respective proceedings are published in the bilingual publication *al-Muqaddamāt/Prologues*.

¹⁹ Amnesties for political prisoners have regularly excluded 'Islamist' detainees. Plans for the coming amnesty are feared to repeat this pattern, cf. Liberty for the Muslim World communication info@liberty.nekonect.co.uk from October 10th, 1998.

²⁰ Cf. art. 39 of the 1996 (revised) constitution on the limits of parliament members' indemnity. Neither the "state system of monarchy" nor "the prescriptions related to the religion of Islam may be subject to a constitutional revision" according to art. 106, cf. <http://www.mincom.gov.ma/english/generalities/state_st/constitution.htm>.

²¹ For one of the harshest critics, cf. Gilles Perrault's: "Notre amie le roi" (2nd edition Paris 1998, online: <<http://www.internatif.org/notes/Maroc/index.html>>, its distribution is prohibited in Morocco. For detailed accounts of the current human rights situation cf. U.S. Department of State Morocco Country Report on Human Rights Practices for 1998, released by the Bureau of Democracy, Human Rights, and Labor, February 26th, 1999, <http://www.state.gov/www/global/human_rights/1998_hrp_report/morocco.html>.

1.2.2) A Secular Republic: Tunisia

The Tunisian constitution makes four references to Islam: The preamble mentions "the teachings of Islam" as the first goal "to remain faithful to", but many others follow, like the attachment

"...to the unity of the Greater Maghreb, to its membership of the Arab family, to co-operation with the African peoples in building a better future, and with all peoples who are struggling for justice and liberty."

The second reference is made in Article 1 [State], defining: "Tunisia is a free State, independent and sovereign; its religion is the Islam, its language is Arabic, and its form is the Republic." art. 38 stipulates the Head of State (the president) be a Muslim: "His religion is Islam". As a consequence, eligibility of the office is restricted to Tunisians who are (among other conditions) of "Moslem religion" (art. 40).

No reference to *sharī'ah* is made in the constitution. As for the family- and personal status laws, they are considered the most secularised of the Muslim world. Tunisia is the only Arab country where polygyny is not only prohibited but even penalised, indicating a clear departure from the once dominant religious *Mālikī*-law school.

Also in contrast to other Muslim countries, secular and religious judicial systems were unified as early as 1956. The political system thus changed from an officially religious one, to one of a state religion (*religion de l'Etat*).²²

Like in Morocco, the evolution of the post-independence political system was largely directed by the one person on top, Bourguiba. Contrary to king Ḥasan of Morocco, however, Bourguiba, did not situate himself—or Tunisia for that matter—, in the Muslim world. Like Mustafa Kemal in Turkey some decades earlier, Bourguiba conceived of all religious tradition as an obstacle to modernisation. He thus confronted the traditional '*ulamā'*' by inciting Muslims not to observe the fifth 'pillar of Islam', the duty of fasting in the month of *Ramaḍān*. With the formula of a 'state religion' Bourguiba attained a de facto secularization of the state less by challenging or even provoking religious establishment (like Atatürk) than by interpretation of tradition.²³

In the 1970ies, the system of Bourguiba suffered a severe crisis of authority due to open confrontations with workers' unions and university students. The unrest manifested itself in strikes, demonstrations, tensions even within the unity party, and eventually lead to the emergence of opposition parties. Paranoid by fear from the political left, the Tunisian gov-

²² One of Tunisia's most eminent jurists, Yadh Ben Achour, gives a concise definition of what he considers as a social consensus on the question of secularism in Tunisia today: *Pratique religieuse dans l'Etat, ni au-dessus, ni contre, ni à côté: c'est ce qui semble être aujourd' hui communément accepté* (1994:362). The author seems to be aware of the fact that proposals of privatising belief as a "religion du for intérieur" (1993:256f, explicit reference to Luther's "Freiheit des Christenmenschen") or "intérieuriser la foi" (Talbi 1998:123) may only be one possible option but yet not a reality for Muslim societies.

²³ The attack on the fasting habit was based on a *ḥadīth* by prophet Muḥammad making the negligence of this duty venial in case of combat (of Muslims against non-Muslims in the original context). In Bourguiba's interpretation, the fight against under-development in one's own society was a case in point for such a combat, cf. Ben Achour (1994:358).

ernment, like the ones in Morocco, Egypt, and elsewhere in the Muslim world, then backed Muslim groups in order to counter the threat to its own power.²⁴

The one sphere where the ambivalence with regard to the secular character of the state had never ceased to persist was the educational system. As Tunisian students started taking up religious studies the contradictory character of the normative foundations of the state was increasingly obvious: While religious law texts conceived of the state as a caliphate, Tunisia's constitution declared the country a republic, while the former holds polygyny legal, Tunisia's family law declares it strictly illegal.

The incoherence of the situation became manifest, as Islamist groups mainly originating from university started to organise for a radical change of the political system. As a consequence, the conflict between the former and the state escalated on the background of a severe economic crisis (civil unrest in 1983/1984 as protest against rise in food prices). The confrontation between the state and the Islamists reached a militant climax in early 1987. Only day before an alleged coup by the Islamists, general Ben Ali took over power from Bourguiba. Initially, the take-over was welcomed by the Islamists from the Mouvement de la tendance islamique led by R. al-Ghanūshī²⁵ and 'A. al-Mūrū'. Their initial confidence in being able to participate in the political process after the removal of the autocratic Bourguiba regime dissolved quickly. The party, renamed in *an-nahḍah*/Renaissance, was denied a license for participation in the elections on the grounds that it represented a religious group not a political party.²⁶ Thus, elections ever since produced a parliament without any political opposition to the de facto unity party, *Rassemblement constitutionnel démocratique* (RCD).

The conflict over the secular character of the state escalated again in 1989 when the minister of education, M. Sharfī, announced a reform of the religious education in order to make it compatible with the (secular) laws of the state. *An-nahḍah* demanded the minister's dismissal from office and started to agitate politically (strikes, violent clashes) mainly within the universities. The movement, representing a union of several smaller groups, repeatedly but—to date—in vain applied for registration as a political party. Contrary to the government's discourse of liberalization, i.e. acceptance of political plurality and contest of its power, the extent of civil liberties de facto diminished, compared to the Bourguiba period. And despite the relevant obligations Tunisia entered with the signing of the Association Treaty with the European Community in 1995, its contemporary human rights situation deteriorates steadily.²⁷

Since 1989, al-Ghanūshī has lived in exile. Some of his considerations as to the future political system in Tunisia will be discussed in the second part of the paper (2.3).

²⁴ Cf. Ben Achour (1994:359), al-Affī al-Akhḍar: Tajīf al-yanābī' al-uṣūliyah (sic! "Draining the Fundamentalists' Sources...") In: *al-Ḥayāt* (London) November 11th, 1997.

²⁵ For his biography cf. *an-Nahḍa*'s official website: <http://www.ezzeitouna.org/annahdha/english/history/portrash.htm>.

²⁶ The party law of 1988 denies registration to any party based in its program on race, language, religion or gener. Furthermore, it demands the party's acknowledgement of the republican form of the state, the sovereignty of the people, of the personal status law, of human rights, and the Arab-Islamic identity, cf. Faath (1994:277).

²⁷ Cf. Amnesty International's general secretary P. Sané in 1996 after a visit to Tunis where he was denied access to political prisoners: "There is a great sophistication in this police-state. There is no more brutal bloody repression, it is much more subtle." pp 4f. According to the general secretary of the *Fédération internationale des Ligues des droits de l'homme* (FIDH), P. Baudouin, makes human rights activists responsible for the bad image of the government, not the human rights violations proper, both cit. from *Le Monde Diplomatique* (1997), no. 2. For more detailed accounts on political detainees, harassment and torture, cf. most recently the Amnesty country report <http://www.amnesty.org/ailib/aireport/ar98/mde30.htm> and the April 1999 documentation of the case of human rights activist R. Nasraoui provided by the Lawyers Committee for Human Rights <http://www.lchr.org/lchr/l2l/nasraouiupd0499.htm>.

1.2.3) Traditionalist Synthesis II: Saudi-Arabia

According to art. 1 of the Saudi kingdom's "Basic Law of Government/*neẓām as-siyāsī li 'l-ḥukm*" , "God's Book and the *Sunnah*" are its constitution (*dustūr*). I.e. Qur'ān and the *aḥ-ādīth* (reported sayings of the prophet)–together commonly considered as the *sharī'ah*–hold a legal status superior to that of the Basic Law-document thus only clarifying the latter. As a result, the document refers to Islam quite frequently (22 times). The ruling principles are mainly influenced by orthodox Islamic political theory. Indicators of this are the invocation of the *bay'a*-principle: "citizens pay allegiance to the King" (art.6), *shūrā* (consultation) as one of the government principles (art.8), and the state's (and therefore the king's) basis of legitimacy as the [supreme, BJT] institution responsible for the protection of Islam, for the implementation of *sharī'ah* and for "ordering the people to do right and shun evil" (*'amr bi 'l-ma'rūf wa nahy 'an 'l-munkar*, art.23).

Besides, the document also contains modern constitutional features like the idea of individual rights as opposed to the duty-based orthodox notions, cf. nominal reference to human rights albeit only "in accordance with the Islamic Shari'ah" (art.26), the sacrosanctity of the private home from intrusion by state authorities (art.27), the prohibition of extra legal punishment (*nulla poena...*, art. 38). A third category of constitutional stipulations consists of hybridisation from both orthodox and Western sources: Since law/*feqh* may only be derived from holy law sources/*sharī'ah*, there can be no human legislative. Therefore, the three state authorities consist of the judicial, the executive and one 'regulatory' power. The basic law foresees no parliament either. Instead, following the consultation principle, the king invites 'whoever he wishes' to the Consultative Council/*majlis ash-shūrā* and to the Council of Ministers (art.68). The function of the former is laid down in art. 15 of the Consultative Council Establishment Act:

"[The council] will express opinions on the general policy of the state..., discuss the general plan of economic and social development... study international laws, charters, treaties and agreements, and concessions and make appropriate suggestions regarding them. Interpret law... discuss annual reports..."²⁸

However, in case of conflict between the council's decision and the opinion of the Council of Ministers the king has the last word on the issue. Accordingly, there are no legal statutes for the establishment of political or other parties, on the contrary, the idea of plurality is quite negatively conceived of: "The consolidation of national unity is a duty, and the state will prevent anything that may lead to disunity, sedition and separation." (art.12). However, Saudi Arabia's current statutory order differs from ancient European monarchies in that it is constitutional. Since Islamic law is—in principle—²⁹supreme to the ruler, it may rather be qualified as 'nomocracy'.

Both documents, the "Basic Law of Government" and the "Establishment Act of the Consultative Council" are comparatively recent achievements.³⁰ Their proclamation (no referen-

²⁸ My emphases.

²⁹ According to the orthodox school of Aḥmad ibn Ḥanbal dominating the law interpretation in the kingdom, the ruler may temporarily suspend stipulations of Islamic law for the common good, cf. Reissner in Ende/Steinbach (1996:536).

³⁰ Prior to the foundation of the kingdom, King 'Abd al-Azīz established a *majlis ash-shūrā* in 1926. In the first year, its members were elected albeit not by general suffrage but by the '*ulamā'*', notables and by the merchants.

dum) by the king in 1992 was preceded by longstanding demands, promises on the side of king and by two significant challenges to the government's legitimacy:

- The first serious challenge after the establishment of the kingdom in 1932 was the seizure of the Grand Mosque in Mecca in 1979 by the militant *ikhwān*-group which was considered the "tip of the iceberg" (Dekmejian 1994:628) of the widespread Islamic revivalism which emerged in the 1970ies not only in the Saudi society but also in neighbouring Iran. As platform for expressing diverging opinions on the state of society, Crown prince Fahd promised to set up a *majlis ash-shūrā* (Consultative Council) and to write down the modalities (*aṣālib*) of governance, but a constitutional committee set up in 1980 eventually failed to do so. In order to improve his religious legitimacy, the king formally assumed the title of the "custodian of the Two Holy Sanctuaries [i.e. Meccah and Medinah, BJT]".
- The second serious challenge to the kingdom's legitimacy was posed by the second Gulf war. In the face of the Iraqi aggression against Kuwait and the consequent massive deployment of US-military, it became apparent that despite decennia of horrendous military expenditures, Saudi Arabia could not defend its economic basis (oilfields) against possible aggression from its neighbouring country. Nor could it meet its own assertions of being able to protect the Holy Sanctuaries—the basis of the kingdom's religio-political legitimacy.

It was particularly the latter aspect of the regime's double failure, namely the obvious dependence on foreign military assistance, which gave rise to—so far unknown—³¹public denunciation from the side of the Islamists: In an unprecedented step, the Islamists in 1991 submitted a letter to the king³²: Top and foremost demand was the "creation of an independent *majlis ash-shūrā* with the actual power to determine the domestic and foreign policies of the country."³³ While the power to "determine"³⁴ any government policy clearly exceeds all notions of mere (traditional) *shūrā* (consultation), the second appeal of the letter appears somewhat contradictory in the light of the former. Namely, the "elimination of all political, administrative, and economic laws and regulations that contradict the sharia." Taken together, the signatories' main idea for coping with plurality consists of upholding the *sharī'atic* character of the political system in principle, while at the same time democratising the interpretation and implementation of the holy law.

Another challenge to the politico-religious legitimacy of the regime occurred when Islamist academics—some of them signatories of the 1991 letter of demands—openly attacked the

Later, they were appointed by the king. Up to 1953, when the first council of ministers was convened it maintained a certain importance.

³¹ Other than the *ikhwān*-militants in the 1970ies, the pre-war Islamist wave enjoyed mass support, according to Dekmejian (1994). However, it restricted its activity—very much like the revolutionary Iranian *pasdarān*- to public 'virtue watching': "to transform social conduct [homogenising plurality for that matter, BJT] by patrolling the shopping malls, spying on people, and raiding homes in search of 'un-Islamic' conduct" (Dekmejian 1994:66).

³² It was only preceded by the petition of "liberal" intellectuals to the king in December 1990 calling for the codification of Islamic law, providing for basic human rights, equality before law, a consultative council, and an independent judiciary, cf. <<http://www.saudhouse.com/petition1.htm>>. For the translation of the 1991 *risālat 'l-'ulamā' fī 's-sa'udiyah ilā 'l-Malik al-Fahd* cf. the Website of the London based *ḥarakat 'l-islāmiya lī 'l-islāḥ* (Movement for Islamic Reform in Arabia, MIRA) <<http://miraserve.com/appendix.html>>, for a history of its evolution from the opposition's point of view <<http://www.miraserve.com/chap6.html>>.

³³ My emphasis.

³⁴ Instead of "determines" the MIRA-version reads "decides".

fatwā (religious legal opinion) of the supreme state *ʿĀlim* (religious legal scholar), Shaikh ʿAbd al-ʿAzīz Ibn al-Baz, sanctioning the presence of the foreign troops in Islam's holy land during the Gulf war. The regime countered Islamist demands by a strategy that combined both appeasement and threats but also incremental reform, such as the promulgation of the 1992 *Niẓām as-siyāsī li 'l-ḥukm* and the appointment of the conservative *ʿĀlim* Shaikh Muḥammad Ibn Jubayr as the chairman of the impending *majlis ash-shūrā*. In the same year—despite their partial victory—the Islamists escalated the confrontation with the regime both in tone and content with yet another open letter to the king. In this "Memorandum of Advice",³⁵ the political objective is less equivocal than in the 1991 letter: First and foremost, the document demands equal rights particularly with respect to the freedom to publish and preach, for those *ʿulamāʾ* who do not pertain to the "official class of *ʿulamāʾ*". However, the plurality of opinions shall only be legitimate insofar as the limits of *sharīʿah* are not transgressed: the establishment of a quasi constitutional—a *sharīʿ* (religious legal)—court is to ensure the compatibility of all laws, treaties, and regulations with Islam. The fact that in reaction to the Memorandum nearly half of the senior ("state") *ʿulamāʾ* declined to sign a denunciation of it (inspired by Shaikh bin Baz), indicates the existence of a not so marginal support for the opposition even within the circles of official clerics.³⁶

A further direct challenge to the Saudi authorities was the foundation of the first Saudi "human rights" organisation, the *lajnah ad-difāʿ ʿan 'l-huqūq ash-sharīʿa* (Committee for the Defence of Legitimate Rights, CDLR) in 1993 by six prominent Islamists.³⁷ The Saudi regime reacted promptly by disbanding CDLR and with the arrest of its spokesman Muḥammad al-Masʿarī who left the country clandestinely in 1994 and since then re-established the Committee in London. Other outspoken critics of the regime remain in detention.³⁸

The conflict about the presence of US-troops escalated with subsequent bomb attacks on US-facilities in the country. Both, CDLR and its off-spring the *Ḥarakat 'l-islāmiyah li 'l-islāḥ* (Movement for Islamic Reform in Arabia, MIRA, est. 1996) either condoned the attacks or expressed "understanding" for the motives of the perpetrators.³⁹

Inside the Saudi political system, the *Majlis ash-shūrā* which became operative at the end of 1993 has not yet managed to offer a forum for the political opposition, let alone to reconcile the fundamentally diverging outlooks on the future state of society. This may, among other

³⁵ On the background of the memorandum from the opposition's perspective, cf. chapter 9 of "History of Dissent (New Edition). The story of Islamic dissent in Arabia" <<http://www.miraserve.com/chap9.html>>.

³⁶ On the other hand, apparently because of the relatively widespread support for the Islamic/Islamist opposition particularly among recently urbanised Bedouins, the regime denied the liberal modernist/lay secular opposition to express their objections to the Islamist project, cf. Dekmejian (1994:628, 639).

³⁷ All but one of them were signatories of the 1992 memorandum, cf. the founding declaration on the CDLR homepage <<http://www.ummah.org.uk/cdlr/Com/COMM01.htm>>. Note, however, the organisation recognises human rights only within the realm of Islamic *sharīʿah*, therefore its self-inflicted designation as "Committee for the Defence of Legitimate (in lieu of "Legal") Rights". Consequently, rather than "human rights organisation", CDLR must—from a Western perspective—be considered as a partisan/political opposition group. Despite the massive use of modern information technology like facsimiles and the world wide web in particular, the founder Masʿarī himself is rather sceptical with respect to the effect inside the country itself, cf. his interview in *The Middle East Times* in 1996, <<http://www.metimes.com/cens/c6.htm>>.

³⁸ Cf. the case of Shaikh al-Awdah, who ignored two government "no speak injunctions" in 1993 and 1994. Despite his imprisonment since then, he continued his outspoken critique in a letter to the King in 1996, cf. <<http://www.saudhouse.com/letter2.htm>>.

³⁹ The Committee Against Corruption in Saudi Arabia (C.A.C.S.A.), another—yet seemingly more "secular"—opposition group entertains a profoundly informative website on the human rights situation and particularly with regard to the freedom of speech cf. <<http://www.saudhouse.com/freedom.htm>>. Its backing inside the country is also difficult to determine, given the fact, that the Saudi government blocks the access to this website for all its residents.

factors, be due to its suffering from an outdated "modernising imperative". In a recent interview, the council's chairman Ibn Jubayr maintained: "If we voted under present conditions we would not obtain the appropriate representatives."⁴⁰ He explained, since Saudi society was still primarily tribally structured, people would not vote for the technocrats who currently present the majority of the *majlis*' members,⁴¹ but for their respective tribal chiefs.⁴²

Therefore, this *majlis* is structurally unable to resonate interests or opinions of Saudi society as a whole, but only those of some "chosen" political élite (although formally no member of the ruling family pertains to its members). Given the additional serious restrictions of the freedom of expression,⁴³ any opinion diverging from the official discourse is considered illegitimate *per se*.

The concept of *shūrā*, is very prominent in various theoretical elaborations of contemporary Muslim political reformism. This will be discussed in the following part of the paper, together with another specifically Saudi tool of managing plurality, that of *naṣīḥah*/"sincere advice".

1.2.4) A Modernist Synthesis: Iran

As the country's official name Jumhūrī-ye Islāmī/"Islamic Republic" indicates, Iran's current constitutional system is based both on Western republican thought and at the same time on specifically Shī'i doctrines of Islamic government. Compared both to other political systems mentioned in this study and to other Middle Eastern countries in general, the Iranian political system was the one to undergo the strongest formal transformations since the 1979 revolution

By way of resort to Iran's pre-Islamic dynasties of *Sasanides* and *Achaemenides*, the Shāh of Persia—particularly toward the end of his reign in the 1970s—had tried to transform the country's character from an Islamic one to an 'authentically' Iranian one. The process of secularisation by reducing the relatively strong influence of the religious authorities in Iranian society and by shattering their independent standing vs. the state had set in much earlier, however.⁴⁴

⁴⁰ Cf. *Frankfurter Allgemeine Zeitung*, January 5th, 1999. Although Ṭalāl Bin 'Abd al-Azīz as-Sa'ūd, half-brother of King Fahd, urged the government to eventually hold "real" elections, he also thought the people not yet mature enough for such a step: "I don't believe we are ready. The Arab countries that have elections, do you think they have real parliaments?" in: *The Middle East Times*, March 15th, 1998 <<http://metimes.com/issue98-11/reg/talal.htm>>.

⁴¹ For listings of past and current *majlis* members, and biographies of its chief executives cf. the homepage of the Saudi embassy in the US <http://www.saudiembassy.net/gov_profile/consult.html>.

⁴² Far from being a rigid structure, the tribes in Saudi Arabia have exhibited a significant capacity for adaptation to changing social conditions while maintaining the old symbols of religious cohesiveness, cf. Nehme (1995:45).

⁴³ According to the Freedom House Special Report to the 55th Session of the United Nations Commission on Human Rights in Geneva, 1999, Saudi-Arabia scored among the 13 'Most repressive Regimes of 1998' (<http://freedomhouse.org/worst98/sudan.html>). Even the otherwise "friendly" US-State Dept. 'Report on Human Rights Practices for 1998, released by the Bureau of Democracy, Human Rights, and Labor, February 26, 1999' reads in Sect. 2.a: "The [Saudi, BJT] Government severely limits freedom of speech and the press. The authorities do not countenance criticism of Islam, the ruling family, or the Government... Persons whose criticisms align them with an organized political opposition are subject to arrest and detention until they confess to a crime or sign a statement promising not to resume such criticisms, which is tantamount to a confession" <http://www.state.gov/www/global/human_rights/1998_hrp_report/saudiara.html>.

⁴⁴ While from a purely religious perspective Iranian-Shī'i *mullā*'s carry the same functions as their counterparts in the Sunnī world, the '*ulamā*' (Halm 1994:103f), only the former may with some justification be conceived of as a clergy, in that they form a strongly (however informally) hierarchised group, distinct from the rest of society.

From early secularisation to popular revolution (I)

While profane power/government in the Sunnī political tradition usually sought support, i.e. religious legitimacy from the (dependent) 'ulamā',⁴⁵ Shī'ī clerics in Iran had managed to retain a relatively strong independence from, and yet mostly disinterested stance toward the state and its policies.⁴⁶ This exceptional structural antagonism may even be regarded as a secularisation in an embryonic stage, a potential point of leverage toward the differentiation of spheres of power.⁴⁷ In the long run, this antagonism led to conflicts more than once. It came about that some influential clerics, being mainly concerned with keeping their independence, sided with the nationalists against the monarchy that was regularly bowing to foreign powers (tobacco protest 1891). For the same reason, some had even sided with the liberal national movement for a constitution (*mashrūṭiyat* 1905-11). This move is noteworthy, since it confronted the clerics with a dilemma that still persists today. The constitutional movement's main thrust was in principle unacceptable since the establishment of a sovereignty that solely rested in the people would not only divest the traditional agency (the king) of power, but also the 'final', i.e. divine sovereign. At the time, the question was deliberately left unsettled. Instead, the compromise that was eventually included in the supplement to the 1906 Constitution acknowledged both sovereignties: While the people were empowered to make laws, the final sovereignty still rested in Islamic law, in principle. Operationally, the 'ulamā' were entitled to revise profane legislation in the light of divine revelation.⁴⁸ This stipulation, like the rest of the constitution became inoperative with the dissolution of the parliament in 1911. However, despite the continuous establishment of secular schools *in lieu* of the traditional religious *madrasahs* from the beginning of the century onwards, despite the fact that the latter nominally acceded to the control of the state, and even after most notarial services had been taken over by state authorities from the 'ulamā', the clergy's authority on religious life proper remained largely intact. After Reḍā Khān had established the *Pahlavi*-Dynasty in 1925, based on the vote of a constituent assembly and with the support of the majority of *mullās*, he carried out his reform programs with large parliamentary support. However, after his ascent of the *Shāh's* throne, parliament lost its influence and its members

⁴⁵ Both colonial and post-colonial regimes in Morocco and Tunisia (likewise Turkey and Egypt) rather incorporated than banned the religious institutions—religion as such (*religion de l'Etat*)- and usurped its functions (education, judiciary). As Keddie (1988:14) rightly contends with respect to the Middle Eastern context: 'Secularism in the case of early to mid-20th century modernisation meant the occupation of the 'ulamā' by the authority of the state.' The potentially fruitful starting point for a major differentiation between the state and 'ulamā' in pre-colonial times was thus neglected.

⁴⁶ All profane rule is held to be illegitimate—th us only provisory until the advent of the *mahdī*, the 12th *imām* (descendant of the prophet Muḥammad and his son in law, 'Alī), resting in occultation since 941 AD) according to traditional Shī'ī conviction (Halm 1994). Except for specific issues in which the *mullās* became politically active, up to the 1960s participation in political life was an anathema (Amirpur 1997:539f). Still today, most of the top 'ulamā', the *ayatullāh al-uẓmās*, are strictly disinterested in participating at political power, if not in outright opposition to the Post-Khumaynī-regime, like Ayātullāh Muntazerī. Popular philosopher 'Abd al-Karīm Surūsh, who is himself not a cleric, heavily criticises the current role of the 'ulamā' in politics because of their incompetence with respect to other sources of knowledge other than religious ones. On Surūsh's political thought cf. Vakili (1997), on the religious educational system cf. Amirpur (1997) and Mottahedeh (1985).

⁴⁷ The traditional institutions of religious authority that had become independent from the state in the 18th century survived, so did the possibility of withholding legitimacy not primarily from the constitutional order as the system of public authority as Arjomand (1993:43) suggests, but from any institution of secular power.

⁴⁸ Art. 2 of the 1907 constitutional annex may thus be regarded a precursor to the 1979 constitution's art. 91 on the functions of the *shūrā-ye negahbān*/Guardian Council'.

were hand-picked.⁴⁹ The constitution was manipulated and its Islamic provisions were ignored.⁵⁰

With the accession to power of Muḥammad Reḍā in 1941, clerics participated more in political life than before, particularly in cases where the protection of national resources were involved and where the clerics own interests were affected by the Shah's policies. An example for the former was the conflict over Prime Minister Muḥammad Muṣaddeq's policy of nationalising the oil industry. He was eventually ousted and the Shah re-instituted by the US-incited Coup d'état in 1953.

An example of the latter was Shah's land reform in 1963 as a part of a larger reform package (*Enqelāb-e sefid*, "white revolution"). The land reform would have undermined the economic basis of the clergy's independence, that rested mainly in the wealthy endowment trusts (*awqāf*). The rally of religious students against the Shah's plans was violently suppressed. In the course of these events and later against the growing influence of the US, one cleric in particular, Ayātullāh Khumaynī, gained profile by opposing the Shah even personally. Exiled in 1965, Khumaynī was soon to propagate the political concept of *velāyat-e faqīh/The Trusteeship of the Islamic Jurist*, (1970).⁵¹ This concept filled the theoretical gap between the generally quietist stance of the clergy and the substitution by a more activist stance toward national policies since the early 1960s.

The Shah had not only quelled the clergy's opposition. After the 1953 Coup d'état, the notorious secret police SAVAK was established mainly as an instrument for oppressing the increasing leftist opposition.

The origins and the objectives of the revolutionary movement starting in the mid-1970s are manifold. However, in the face of the political system deteriorating into a 'Monarcho-Dictatorship' (Behrawan 1980) the primary objective of the revolutionary movement was the establishment of human and civil rights. The two party-system that had once been introduced as a concession to the US, was transformed to unity party in 1975. Like the nominal two party-system before, it proved incapable to channel the political opposition. Secular groups like Shāhpūr Bakhtiyār's National Front or moderately Islamic groups like Mehdi Bāzargān's Freedom Movement had an important share in bringing about the end of the Shah's reign. However, solely Khumaynī's charismatic personality was able to merge the very diverse fractions of the revolutionary movement. Eventually, after the fall of the Shāh and the Bakhtiyār interim government, Khumaynī and his followers from the clergy emerged as the strongest group in the inter-factional quarrels for power.

Between 'Republic' and 'Trusteeship of the Jurist'

Contrary to what might have been expected then, the new rulers did not at first seek to erect a genuinely Islamic system of *Caliphate* or the specifically Shī'i *Imāmate*. The first draft of the new constitution leaned heavily on the 1906 text and on the Gaullist French constitution,

⁴⁹ Like many other rulers in the Muslim world, Reḍā Shāh was inspired by the secularist project of Mustafa Kemal in Turkey. Like him, he embarked on "modernising" society by the most superficial of means, like making European clothing obligatory for men (1929) and by prohibiting the traditional veil of women (1936). By forcing the Shī'i '*ulamā*' to continue wearing their traditional clothing in contrast to the rest of the population and by obliging them to undergo a state examination Shāh Reḍā eventually accomplished their transformation into a hierarchy, cf. Halm (1994:141). Rather early, however, the Shah had departed from the republican idea and sought support i.e. religious legitimacy, from the '*ulamā*', instead, cf. Steinbach (Ende/Steinbach 1996:248).

⁵⁰ Cf. Arjomand (1993:23).

⁵¹ The original text leaves open whether a single person or several jurists are entitled to leadership, cf. Halm (1994:159).

it lacked all explicit and implicit reference to *velayāt-e faqīh*. However, after the first referendum produced an overwhelming popular mandate for the establishment of an 'Islamic Republic', the plans for a broad constitutional assembly were given up in favour of an elected 'expert assembly',⁵² mostly consisting of clerics who were dissatisfied with the secular character of the draft. The assembly modified the draft in crucial aspects concerning the role of Islamic law and that of the Islamic jurists/*fuqahā*. The final version did not resemble the original draft very much any more:

- A moderate form of the *velayāt-e faqīh*, i.e. the supreme trusteeship of the Revolutionary Leader (*rahbar*) was now—if only implicitly—introduced by art. 5: "During the Occultation of the *Wali al-Asr* (may God hasten his reappearance), the *wilayah* and leadership of the *Ummah* devolve upon the just ('*adil*) and pious (*muttaqī*) *faqih*..."⁵³ While his powers laid down in art. 110 clearly exceed mere supervision over the three branches of government, he is not allotted the plenipotentiary role of Khomeynī's 1970 *velayāt-e faqīh*-concept.
- Conversely to the 1906 constitution and to the draft, the Leader of the Revolution—acknowledged by the majority of the population—was expected to meet the highest of all possible religious qualifications⁵⁴ whereas the draft constitution had not even properly differentiated this post from that of the presidency. The importance of the religious jurists in general is further stressed by the fundamental principles of the Islamic system as laid down in art. 2, which—in order to adapt rigid *sharī'ah*-stipulations to the modern times—prescribes "continual *ijtihād*/[individual strife for a just solution/ruling] by qualified jurists."
- For the first time in the constitutional history of Iran, the principal division of powers into legislative, executive, and judicature was established at least formally. One major objective of the revolutionary movement was accomplished with the establishment of the fundamental human and political rights. All those were granted, however, only within the limits of Islamic law. art. 24, for example, grants the freedom of the press, art. 26 the freedom of association—both under the condition that they do not harm "fundamental principles of Islam".

Art. 12 also establishes Islam and the *Ja'afarite* law school as the official religion of the state. Furthermore, the constitution provides that only religious experts or rather *fuqahā*/religious jurists in particular, are eligible to fill important functions of the state. However, while the sovereignty of the people is, in principle, only conferred and God only delegates the right to rule (art. 56), it is the people, not the *fuqahā*, who are entitled to exercise this right. Operationally, sovereignty is exercised by the popularly elected Consultative Assembly/*majlis-e shūrā*. The relative strength of the parliament is indicated by the fact that the constitution does not provide for any procedures to dissolve it. The *majlis'* legislation is, however, overlooked and—if deemed—vetoed, by the Guardian Council/*shūrā-ye negahbān*, consisting of 12 jurists.⁵⁵

⁵² On the unfair election process, cf. Schirazi (1997:31f).

⁵³ Cit. from the Iranian government website

<<http://www.salamiran.org/IranInfo/State/Constitution/articles/a005.html>>. Unless otherwise indicated, all further references to the constitution are quoted from this site.

⁵⁴ That of *marja' t-taqlīd*/source of inspiration, cf. Halm (1994:133-37).

⁵⁵ While only half of the members have to qualify as *faqīh*, they alone decide on the conformity of secular law with the *sharī'ah*.

Regardless of the fact that the new constitution vindicated the distinction between laymen and clerics, it was also approved by popular referendum. Soon after the new regime's firm establishment, however, it was confronted with opposition from ethnic groups whose long-standing demands regarding autonomy and/or acknowledgement of cultural distinction (Kurds, Azeri, Baloch) were denied despite the latter's active support in the overthrow of the Shah. By methods similar to those of the late Shāh (detention, torture, extra-judicial execution by secret police) and sometimes even more extreme measures (mass executions) the revolutionary regime pitilessly suppressed and thus forced outside the country opposition groups of all deviant ideological orientations, such as monarchists, democrats, moderate Islamists, and communists. The human rights situation further deteriorated on the background of Gulf-War I, starting with Iraq's attack in 1980 and ending only in 1988. The freedom of association and freedom of the press granted in arts. 26 and 24 of the constitution notwithstanding, all non-Islamic organisations, groups, and parties were successively prohibited, as were their respective press organs.⁵⁶ However, a unitary party—founded by the regime as an alternative platform for channelling dissatisfaction with the government, the Islamic Republican Party (IRP)—proved largely ineffective, and thus dissolved itself voluntarily in 1987.

At the end of the Gulf-War, relieved from external pressure, severe factional antagonisms erupted openly inside government and parliament between rather dogmatically orientated clerics on the one side and more pragmatically orientated ones on the other.⁵⁷

Based on the constitutional arrangement of a double-headed executive branch (president and Leader of the Revolution), and given both Khomeynī's unquestionable reputation as excellent jurist of religious law and his charismatic qualities, he concentrated much more *de facto*-power in his hands than the constitution formally assigned to him. By way of giving *fatwās*/legal opinions, he publicly answered questions addressed to him by various state agencies and quarrelling power fractions within the state.⁵⁸ Albeit on an abstract level of constitutional theory which left space for further debate and elaboration by the pertinent agencies, Khomeynī nevertheless laid out the policy-outlines for the most important social, economic, and political questions.

From *raison d'état* to "popular revolution II" ?

One of Khomeynī's strongest statements addressed the ever more pressing problem of preserving the consistency of parliament's legislation with *sharī'ah*-law. Crucial legislative projects had been blocked by the competition between *majlis* and *shūrā-ye negahbān*. In 1988 Khomeynī decreed "what is in the interest (*maṣlaḥat*) of maintaining [the ruling] order" was the "most important of God's ordinances (*aḥkām-e elāhī*)" and stood above "all ordinances that were derived or directly commanded by Allah".⁵⁹ Khomeynī himself appointed an extra-

⁵⁶ Cf. Schirazi (1997:124-50). Most of the nearly 100 political organisations that emerged between 1979 and 1981 had been declared illegal, cf. Fairbanks (1998:21).

⁵⁷ More specifically, from the very beginning the antagonism inside the successive revolutionary governments had persisted between those aiming at a radical Islamisation of the state in the cultural and judicial sphere while objecting to social and economic transformation of society (*hujjatiye*) on the one side, and groups propagating just the opposite (*maktabī*), on the other side. The principles clashed particularly in the *majlis*, thereby blocking important legislative projects, cf. Steinbach in Ende/Steinbach (1996:262).

⁵⁸ Cf. Gholamasad (1999:32-36) on the constitutional foundations of Khomeynī's charismatic leadership.

⁵⁹ Cited from Schirazi (1997:64). According to the author, this *fatwā* merely sanctioned the much earlier references made to *maṣlaḥat*. Particularly in legislation concerning economic, and in particular fiscal/taxation-matters,

constitutional body designed to mediate between *majlis* and the Guardian Council. De facto, however, this *majma'e tashkhīṣ-e maṣlaḥat-e neẓām* "Assembly for the Assessment of the Interest of the System"⁶⁰ became a third legislative body.

In order to smoothen the legislative process and also aiming to strengthen the president at the expense of the *raḥbar*, the constitution was revised to take its current form in 1989. Due to the problem that no properly qualified 'ālim/religious scholar was interested in taking the post of *raḥbar* after the foreseeable demise of Khomeynī, the latter consented to ceding power to the president, thereby making the president/*ra'īs* the indisputable head of the executive.⁶¹ Additionally, the formal requirements for the post of *raḥbar* were lowered, such that the future Leader of the Revolution did not have to meet the qualification of *marja' t-taqlīd*. Furthermore, while the *majma'e tashkhīṣ* was given a constitutional foundation (art. 112) it was formally stripped of its power to frame legislation in circumvention of the original agencies, *majlis* and *shūrā-ye negahbān*. Mirroring the modifications of the executive branch, the judiciary was also given a single head.

Likewise due to the ending of the war and because of strong pressure from the *majlis*, the implementation of the law on the registration of political parties/associations could no longer be postponed. Within two weeks of the official registration period in the beginning of 1989, 28 groups applied for recognition by the interior ministry. However, whether or not they were granted this recognition, did not matter much in political practice.⁶² Although several groups functioned as quasi-parties in the 1992 and 1996 *majlis*-elections, and organisational support was given to the candidates in the 1997 presidential elections, political parties were still no reality. President Rafsanjānī's announcement in early 1997, that he favoured party formation, *taḥazzub*, was ambiguous since he alluded to Khomeynī's interpretation which had referred to the formation of a single unity party only. In contrast, Ayātullāh Muḥammad Khātāmī had—however cautiously—approved pluralism of parties before the presidential elections. After he replaced Rafsanjānī after a landslide victory in 1997, he successively accomplished the (re)-introduction of the concept of an "(Islamic) civil society/*jāme'e-ye maddani*" not only into the public Iranian political discourse⁶³ but also propagated it on international Muslim forums like the Organisation of Islamic Conference.⁶⁴ While Iranian intellectuals and authors like Hūshang Gulshirī, 'Abbās Ma'arūfī, or Faraj Sarkūhī hailed the advent of the "liberal" president, and despite Khātāmī's frequent appeals to the freedom of the press, po-

parliament had referred to *maṣlaḥat* as early as 1980, cf. Schirazi (1997:237-47). Cf. Reissner (1988:214) with a different translation of the *fatwā* and on problems of judicial terminology and semantics (223-26).

⁶⁰ The official English translation is 'Expediency Council' while Schirazi (1997:234f) translates 'Assessment Council'.

⁶¹ However, through a system of commissioners—all of them clerics and directly responsible to the *raḥbar*—the current Leader of the Revolution, Ayātullāh Khāmene'ī, like his predecessor, Khomeynī, is able to exert indeterminate influence in all major ministries and state agencies, including the armed forces, religious and revolutionary organisations, and provincial authorities, cf. Buchta (1998:56-60).

⁶² Fairbanks (1998:22) quotes groups that were able to participate in the *majlis*-election without being permitted to, others were permitted, but they failed to be politically active.

⁶³ Conversely to Khomeynī, Khātāmī is positively impressed by Western liberalist political theory, cf. his treatise *Az dunyā-ye shahr tā shahr-e dunyā: sayrī dar andīsheh-ye siyāsi-ye gharb* / From the World of the City to the City of the World: A Survey of Western Political Thought. For a review of the book and on Khātāmī's intellectual background cf. Bakhash, Sh: The Unlikely President, in *The New York Review of Books*, Nov. 5th, 1998 <<http://www.nybooks.com/nyrev/WWWarchdisplay.cgi?19981105047R>>. On the concept of civil society and its cultural foundations in the Iranian context, cf. e.g. the contribution of Hashmatullāh Ṭabarzadī in *Mehregān*, vol. 7 (1998) no. 2 <<http://www.ig-dc.com/mehregan/126-01.htm>>. For a detailed overview on the civil society debate, cf. Schirazi (1998).

⁶⁴ Cf. Khātāmī's address to the 8th Session of the Islamic Summit Conference 1997 <<http://www.undp.org/missions/iran/new008.html>>.

litical development and inter- civilisational dialogue in the Iranian public,⁶⁵ in international conferences, and media,⁶⁶ as of mid-1999, the political discourse is still heavily engaged in negotiating (and sometimes violently struggling with) the

"...fundamental distinction between a hierocratic elite, defined by their formal qualifications as jurists... and the lay citizens, with the eligibility for Leadership, Headship of the Judiciary Power, membership in the Assembly of Experts, and the six consequential positions in the Council of Guardians..."⁶⁷

Despite the fact that this fundamental discussion took full swing only two years ago, at least four informal political groupings are discernible within the whole of the political apparatus (i.e. they are operative in all of its branches and on different levels of administration). They may be grouped according to their respective stance toward the two foci of discussion that emerged from the larger *problematique*, namely

- whether the *rahbar* is subject to the constitution and to the will of the people or not,
- political pluralism in general, i.e. the establishment of political parties, the freedom of expression, etc.⁶⁸

Two of the groupings approve of a more liberal stance toward both issues:

- The *rāst-e mudern*/"Modern Right", mainly technocrats represented by the *kārguzārān-e sāzandegī*-organisation and the capital's former mayor, Ghulām-Ḥusayn Karbāstchī.⁶⁹
- Since only recently, the *tchāp-e islāmī*/"Islamic Left" that includes organisations like the *majma'-ye rūḥāniyūn-e mubārez* under its leader M. Karrūbī and the *sāzemān-e mujāhedīn-e enqelāb-e islāmī* under B. Nabavī.

Two other groupings decidedly oppose the former:

- *Tchap-e jadīd*/"New Left", represented by the *jāme'e defā'-ye az arzeshhā-ye enqelāb-e islāmī* with its leader M. Ray-Shahrī and
- *Rāst-e sunnatī*/"Traditionalist Right" including the *jāme'e-ye rūḥāniyat-e mūbārez*, represented by the 1997 presidential candidate M. Nāteq-Nūrī and others.⁷⁰

Only recently, the current Revolutionary Leader, Ayatullāh Khāmene'ī himself made a conciliatory move with regard to the 'Irreconcilable Entities'⁷¹ and toward the affirmation of a *Rechtsstaat* by declaring all Iranians—explicitly including the *valī-ye faqīh*—as subject to the

⁶⁵ Cf. his critique on restrictions on personal freedom and freedom of expression in the name of Islam as counterproductive to their very target, namely to 'social cohesion/*waḥdat-e mella'*'. While in principle upholding Islamic values and explicitly juxtaposing 'Western' secular societies and 'religious societies' like Iran, Khātāmī fears that particularly the Iranian youth will be alienated from the spiritual dimensions of Islam if the latter is instrumentalised for purely political purposes, cf. his speech reported in the periodical *Tūs* August 27th, 1998 <www.persia.org/khatami/tous27aug.html>. Contrary to the rigorous refutation of "Western civilisation" by Khomeynī and his successor Khāmene'ī and other intellectuals, Khātāmī proposes the year 2001 as the year for a universal dialogue of civilisations/*guftegū-ye tamaddunhā*, cf. his speech before the UN-General Assembly on September 21st, 1998 <<http://www.gov.ir/year2001/khatamiun.htm>>.

⁶⁶ Cf. his contribution to the Arabic weekly *al-Alam* (London) on March 15th and 22nd 1997, the transcript of an interview with CNN on January 7th, 1998, <<http://www.un.int/iran/statements/other/other007.html>>, and his exclusive contributions in the German daily, *Frankfurter Allgemeine Zeitung* on August 8th and September 26th, 1998.

⁶⁷ Arjomand (1993:40f).

⁶⁸ This fundamental question on the final sovereignty, i.e. who is in charge, is not free of content. It may be regarded as a culmination of the antagonism between *hujjatiye* and *maktabī*, referred to above, cf. fn. 56.

⁶⁹ The latter is editor-in-chief of the daily *Hamshahrī*, <<http://www.neda.net/hamshahrī>>. The dailies '*Eṭṭelā'āt*' <<http://194.217.65.51/Gha/HomeEdition/index.htm>> and *Irān* <<http://www.iran-newspaper.com>> also pertain to *rāst-e mudern*.

⁷⁰ For a more detailed account of these groupings, cf. Buchta (1998:46-52).

⁷¹ Cf. Reḍā Tcherandābī's '*jumhūriyat wa 'velāyat' āshtā-ye nāpādhiand*'/"Republic' and 'Velayat'—Irreconcilable Entities" in *Mehregān* vol. 7 (Fall 1998/1999) no. 3+4 <<http://www.ig-dc.com/mehregan/134-01.htm>>

law.⁷² The authority of the clerics was recently further eroded with regard to their initial power of denying 'un-Islamic' individuals the right to be nominated in elections. The *modus operandi* for the latest (1999) communal elections foresaw the prospective candidates to subject themselves only formally, i.e. in a written declaration to the authority of the *valī*. In return, no cleric was to judge their attitude 'Islamic' or 'un-Islamic'.⁷³

While the groups mentioned above also enjoy popular support, particularly as they represent the organisational infrastructure for elections, they are nevertheless mainly operative within the formal branches of the state i.e. executive, legislative, and the judiciary, as well as in the informal spheres of power (e.g. endowment trusts).

Apart from those groupings, some *nuclei* of an arguably "Islamic (non-secular, for that matter) civil society" are discernible. This semi-religious opposition of lay-reformers and quietist clerics operates at the brink of the political system and society.⁷⁴

- *Nahdat-e āzādī-ye Irān*/Iranian Freedom Movement, going back to the Ayātolāh Ṭāleqānī and M. Bāzargān, today represented by Ibrahīm Yazdī. They are considered loyal to the constitution while opposing the principle of *velayāt-e faqīh*.⁷⁵
- The group around 'Ezattullāh Sahābī, and its publication *Irān-e fardā*⁷⁶ claiming an Islamic social democracy for Iran.
- A group of religious-intellectual reformers publishing in the *Kiyān*-journal,⁷⁷ among the most prominent figures is the philosopher 'Abd al-Karīm Surūsh, who will be dealt with in the second part of the paper.
- The quietist clerics among whom are some of the highest religious qualifications (Ayātolāh Ṭābātābā'ī-Qumī, Šādeq Rūhānī, Muḥammad Shīrāzī) have already been mentioned above as being mostly disinterested in aspiring to profane power.
- Followers of Ayātullāh Muntazerī, who had evolved from a close partisan of Khomeynī to an outspoken critic of the government's policy. He was thus dismissed as the designated follower of the *rahbar*, despite the fact that his religious qualifications did meet the constitutional requirements—in contrast to Khomeynī's. Supporting the formation of political parties, he praised Khatamī's election as an *enqelāb-e mardumī*/"popular revolution".⁷⁸

⁷² Cf. his address to students at Tarbiyat Mudarres University, Tehran, September 3rd, 1998, English version on the website of the Ministry of P. T. T. Data Communication of Iran
<<http://www.iranpac.net.ir/dci/pagehtm/rahbar.html>> (inoperative at the time of print).

⁷³ Neue Zürcher Zeitung April 13th, 1999.

⁷⁴ For more detailed accounts of these groups, cf. Buchta (1998:76-82).

⁷⁵ Cf. their website and periodical <<http://www.nehzateazadi.org>>. On Ṭāleqānī cf. recently Vakily 1998.

⁷⁶ Cf. <<http://www.angelfire.com/ok2/gooya3/farda49.html>>.

⁷⁷ Cf. <<http://www.angelfire.com/ok2/gooya4/kiyan.html>>. On the journal as a forum for the so called *rūshanfekr-e dīnī*/"religious enlightenment", cf. *Orient* (Hamburg) vol. 38 (1998) no. 1, p. 29-40.

⁷⁸ In a letter to the president, he also declared: "Tashkīl aḥzāb-e siyāsī bāyad āzād bāshad/the formation of parties has to be free" <<http://www.iranian.com/Opinion/June97/Montazeri/Page1.shtml>>.

(Re-)secularisation: toward Bureaucratisation and Rule of law

With regard to the differentiation of spheres of power, the Iranian political system is the case to undergo all stages from an 'embryonic secularism' in the beginning of the century, to an anti-religious Iranian nationalism of the late Shāh, ending up in the rule of the clerics after the 1979 revolution.

Apparently, the 'fundamentalist roll-back' succeeded in 'Islamising' most spheres of law by subjecting all profane law to the revealed *sharī'ah*. While this is theoretically true, an alternative reading of what actually happened is equally conceivable: By a series of institutional and procedural innovations, the '*ulamā*' from the very beginning of religious rule have proceeded from mere extraction of law (from revelation) to outright legislation.⁷⁹ Furthermore, by confirming or, at least by not disapproving most of *majlis*-legislation, which covers practically all spheres of everyday life, parliament's essentially profane legislation now carries the label 'in accordance with *sharī'ah*', and can thus claim religious legitimacy.⁸⁰ In reality, this means that enormous amounts of secular legal material has been assimilated by Shī'i canonical law.⁸¹

The principle of *velayāt-e faqīh*/"Trusteeship of the Jurist", a pivotal feature that violated the republican division of power and thus made the Iranian constitution only "semi-secular", must be considered to be defused by the *de facto* implications of the 1989 constitutional revision:

"The constitutional amendments of 1989 completed the translation of the Mandate [otherwise translated as: Trusteeship, BJT] of the Jurist into the constitutional law of the bureaucratic state by compartmentalizing, conciliarizing and bureaucratizing it. The result is a triumph not only for conciliar clericalism but also for the state... which Khomeyni initially intended to wither... [The state] has emerged as the unintended victor of the Islamic revolution, making its clerical masters also slaves to its logic."⁸²

This logic is in essence one of successively submitting all state powers to proper (profane) legislative control. This trend toward the establishment of the rule of law is actively—and apparently not solely for strategic reasons—propagated by the current president Khātāmī.⁸³ Only recently he upheld the *majlis*' right to run an impeachment procedure even against one of his closest supporters, the Minister for Culture and Islamic Guidance, Ayātullāh Mujaḥerānī.⁸⁴

⁷⁹ For the circumvention of *sharī'ah* by *qā'edeh-ye ḍarūrāt*/emergency rule (e.g. laws on: urban land, land reform, rent, domestic and foreign trade, and speculation), *sharṭ-e demn-e 'aqd*/"binding secondary contractual conditions" (e.g. labour law, marriage and divorce law), and *ahkām-e ḥukūmatī*/state ordinances modifying *sharī'ah*'s penal law (including punishments that are regarded as fixed by *sharī'ah*, namely the *ḥudūd*!), cf. Schirazi (1997:173-232).

⁸⁰ It is noteworthy that in only about half of the few cases in which the *shūrā-ye negahbān* incriminated legislative bills at all, it was with reference to *sharī'ah*. All other bills were reprimanded on the grounds that they violated the constitution, cf. Schirazi (1997:171).

⁸¹ Arjomand (1993:47), Schirazi (1997:161-74).

⁸² Arjomand (1993:48), my emphases. Cf. similarly Gholamasad (1999:27-38) on Khumaynīst charismatic leadership shifting from traditionalist rule to legalisation of government.

⁸³ "No one should consider himself above the law and try to impose his views on others... Our objective is to bring everything within the framework of law... we spare no effort to institutionalize the rule of law", cf. transcript of a CNN-interview with Iranian President Mohammad Khatami (1998) <<http://www.un.int/iran/statements/other/other007.html>>.

⁸⁴ "It is the right of the *majlis* to impeach, investigate and pass suitable legislation in the interest of the people and society," in: '*Eṭṭelā'āt* (*bayn al-mellalī*/International edition) April 23rd, 1999.

Accommodation of plurality: Grounds for optimism?

Since Khātāmī's election in 1997, the relatively high degree of political plurality, to an extent that was previously visible mainly within the *majlis*, is now reflected within the larger Iranian political system. In contrast to the Tunisian, Moroccan, and in particular to the Saudi case, this plurality is manifest in the existence of quasi-political parties, representing substantially different political agendas and competing for power inside the political system, and outside, in the civil sphere. In some instances, pluralism of this kind is either (partially or periodically) endorsed by the state or, the endorsement is renounced. In most instances, however, publications, group/party formation etc. are neither legally approved nor disapproved, but *de facto* remain unsuppressed. Thus, a widespread uncertainty persists both in the civil sphere and in the state itself as to the extent of plurality that is legally permitted or tolerated by the various agencies of the state.

It is clear, however, that explicitly secularist agendas (e.g. denial of Islam as a state religion) run counter to the constitution and will therefore remain unacceptable to any government for the foreseeable future.

Still, violations of basic civil rights continue to occur particularly in the realm of the freedom of the press.⁸⁵ More severely, serial assassinations of intellectuals since late 1998 or incidents like the attack on Tehran University students in July 1999, due to the competition between the various power centres within the political apparatus, human rights violations cannot be properly attributed to either one of the state agencies. This renders a criminal prosecution of these cases an intricate political action.⁸⁶ Unquestionably serious is the human rights situation with respect to ethnic (Kurds) and religious minorities, especially the *Bahā'ī*-denomination which is considered apostate from Muslim faith.⁸⁷

1.2.5) In sum: Different degrees of secularisation—similar deficiencies: participation, free speech, and human rights in legal reality

The brief empirical overview on different constitutional systems and their respective reality has validated the hypothesis that—regardless of the systems' 'secular' or 'semi-secular' legal character—the factual accommodation of plurality is far from satisfying in either one of the four cases.

Taboo issues: In all cases, regimes have persistently refused or still refuse to respond to or outright suppress the public discourse on fundamental political issues:

- extra-constitutional status of the king and state religion in Morocco
- similarly the "*Pratique religieuse dans l'état, ni au-dessus, ni contre, ni à côté*" in Tunisia
- veritable political participation of the *majlis ash-shūrā*/consultative council in Saudi-Arabia,

⁸⁵ Cf. the repetitious prohibition of the *Tūs* (formerly: *Jāme'e*-)journal. Cf. also the recent letter of more than 320 journalists to the president demanding safety against "possible injuries inflicted by institutions of power and other agencies every once in a while..." cf. IRNA-newsagency April 17th, 1999.

⁸⁶ Cf. the pro-Khātāmī *Iran Daily* of July 19th, 1999: "...pressure groups were mainly involved in both the sabotage and attacks on students... [they] do not have any legal orientation and do not take orders from any of the government officials..."

⁸⁷ Cf. the Iran Country Report on Human Rights Practices for 1998, released by the Bureau of Democracy, Human Rights, and Labor, February 26, 1999
<http://www.state.gov/www/global/human_rights/1998_hrp_report/iran.html>.

- constitutional status of the *rahbar-e enqelāb*/Leader of the revolution in Iran.

Violation of civil and human rights: In all cases, opposition referring to the above mentioned taboos is either suppressed and forced into internal retreat or exile.

In order to suppress the above mentioned issues and the respective political opposition effectively, all regimes utilise means that violate not 'only' civil, but at times even basic human rights.

In country rankings with respect to the occurrence of human and civil rights violations from 1972 until today, only Morocco can be considered as a 'partially free' political system for the whole period, Tunisia from 1979 until 1993 (the remainder 'not free'). Iran is considered 'not free' with the exception of the post-revolutionary period from 1984-88 (partly free), Saudi-Arabia is scaled 'not free' for the whole term.⁸⁸ If—contrary to the working hypothesis—successful accommodation of plurality was indeed dependent on the degree of secularisation (counter-hypothesis), Tunisia, *in lieu* of Morocco would be expected to fare best among all cases, which is not the case.

From this follows that the pivotal task of accommodating plurality has not successfully been achieved by the existing models of political organisation. It is thus justified to investigate projects that are aimed at improving the current malaise.

Most authors the paper refers to originate from the Muslim world. However, for the lack of freedom of expression in their own societies many chose to live elsewhere. Having experienced more or less massive repression for expressing their views their proposals usually do not or only indirectly allude to the contemporary situation. In order to make the "subtext" of the respective writings visible, it is necessary to give an overview on the wider ideological, historical, and socio-political context out of which they emerge. The linkage between country- or region-specific contexts on the one side and the reformatory projects on the other is sometimes rather close—as in the case of Tunisian Opposition leader R. al-Ghanūshī—and sometimes rather loose as e.g. in the case of Algerian born M. Arkoun. This is not only due to the different disciplinary approaches the authors take toward their projects but also to their living either inside the situation he or she seeks betterment for, or outside it, in exile. Possible success of the desired changes will be dealt with in the third chapter.

2) Contemporary Muslim Political Discourse: Between Conflationism and Deconflationism⁸⁹

Contrary to the concept of 'democracy' which remained a loan-word in both Arabic (*dīmuqrāṭīyah*) and in Persian (*dimukrāsī*), pluralism/*ta'addudīyah* by the middle of the last decade even became "indigenised" in Muslim languages.⁹⁰

⁸⁸ Cf. Freedom House's (1972-99) country rankings <<http://freedomhouse.org/rankings.pdf>>, I owe the reference to A. Liese.

⁸⁹ On a much earlier version of this chapter I received valuable comments from M. Beisheim, L. Broszus, D. Senghaas, G. Walter, Ch. Weller, B. Zangl.

⁹⁰ Cf. Yazbeck Haddad (1995:3), based on the 5th derivate of 'adda/to count, *ta'ada*/to multiply it- or oneself, cf. Wehr (1985:816).

The underlying problem of diametrically opposed worldviews is, however, by no means a recent phenomenon in the Muslim world. After this short introduction I will depict this in a short chronological survey on the discursive antagonism between the "conflationist" position—based on the normative claim of an interconnection between the *fanum*/sacred and *profanum*/profane sphere in public life—on the one side, and the "de-conflationist" attitude—based on a separation of *civitas mundi* from *civitas dei*—on the other. After a short clarification of these concepts (2.1),⁹¹ will then shortly expose to what extent both attitudes are dependent on one another (2.2). In the following chapter (2.3) the scope of opinions within the "moderate" conflationist debate is explored with regard to some concepts that are pivotal to contemporary (unless otherwise indicated, Sunnī) Muslim political theory: *tawḥīd*/oneness of god (2.3.1), *ijtihād*/personal reasoning (2.3.2), *naṣīḥah*/sincere advice (2.3.3) and *shūrā*/consultation (2.3.4).

The inquiry into Muslim attitudes toward plurality thus oscillates between two analytical dimensions: in one dimension I try to unfold the scope of positions within the discourse itself (mode of deliberation), in the second dimension I explore the contemporary interpretation of the politico-judicial concepts just mentioned with regard to their varying references to either one's own heritage/*at-turāth* or to foreign models (content of deliberation). I will then critically assess those proposals (3), with regard to their potential contribution to the handling of plurality in the respective Muslim societies overviewed in the first part of the paper. Like the empirical overview, the inquiry is above all limited to internal plurality of predominantly Muslim societies. This limitation concerning the procedure of research is based on the assumption that the constructive accommodation of plurality within Muslim political thought is a necessary (albeit not sufficient) precondition for an apt re-configuration of both the status of non-Muslims in predominantly Muslim societies and for the way Muslims define their role in non-Muslim societies—both of which are subject to a later inquiry.⁹²

2.1) *Genesis*

The emergence of plurality in the Muslim world in the sense of a public debate on fundamentally divergent outlooks on the world was instigated at the latest by Napoleon's intervention in Egypt 1798. Ever since this first material confrontation with Western civilisation, public debate in the intellectual centre of the Ottoman Empire focussed on how to overcome Muslim civilisation's apparent weakness.

Recurring confrontations with the imperial powers and the resulting defeats urged a discourse on reform (*al-iṣlāḥ*) and polarised the attitudes with regard to the relationship between the worldly and the after-worldly, between the visible/*al-manẓūr* and the invisible/*khayr al-manẓūr*, between the religion/*dīn* and the world/*dunyā*. The conflationist outlook "*Islām—dīn wa dawlah*/Islam—religion and state" on the one hand and the deconflationist differentiation of *civitas mundi* from *civitas dei* on the other, only represented the most extreme poles within a continuum of possible attitudes.

⁹¹ I owe the terminology to Salvatore (1997).

⁹² For a first tentative approach, cf. my paper prepared for the 'Conference on Islam and Human Rights', March 15th-17th, 1999 in Sofia: The Cairo Declaration on Human Rights in Islam: Juridical, Political and Religious Implications for the Status of Minorities <<http://www-user.uni-bremen.de/~bjtraut/sofia.pdf>>.

A short note on the use of the terms 'conflationism' and 'deconflationism', which were only recently introduced into the analytical discourse by Salvatore (1997:81f): In the following part of the paper it will appear that 'conflationism' merely corresponds to 'fundamentalism' or 'Islamism', 'deconflationism' would then correspond to 'secularism' or even (political) 'modernity'. So, why not stay with these well-established notions? The reason for not or only cautiously employing these more 'common' terms, is twofold: 'fundamentalism' historically emerged out of the specific evangelical Protestant context. By way of projection of this notion on any traditional and anti-secular conception of the world anywhere on the globe, its original meaning ('The Fundamentals' of creed) was reversed to acquire today's decidedly pejorative touch. 'Secularism' also lost the original impetus of Holyoake's 'Secularism-A Religion Which Gives Heaven no Trouble' (London ca. 1848 AD) to denote the rather technical aspect of contemporary political systems and constitutions. Frequently applied in an essentialist manner without taking into account the high degree of empirical variance in the historical development and implementation, 'secularism' regularly carries an unreflected positive connotation in Western political discourse or an equally negative one for the conflationist pole of Muslim political discourse. In addition to avoiding such *a priori*-judgements, it will become clear in the following chapter that the terms 'conflationism' and 'deconflationism' encompass more than the historically highly circumscribed and ideologically charged notions of 'secularism' and 'fundamentalism'. Moreover, reformist projects of the kind investigated here may seem 'secular' in the political context of a specific country in the Muslim world, but may still appear 'conflationist' from the perspective of an essentialist understanding of secularism.

Back to the genesis of the radically opposed worldviews in the Muslim world: It is important to keep in mind that the discussion within the Muslim community on whether innovation is a "*bid'ah*/heretic teaching" or not is by no means a recent development of "fundamentalism". It appeared from the beginning of and within the modernist discourse in the Muslim world as becomes clear by the example of the controversy over sovereignty within the Young Turks movement of the late Ottoman Empire: While Namik Kemal (d. 1888) assumed the right of the community to choose its *Imām*/leader and that "the sovereignty belongs to all", his contemporary rival Ali Suavi formulated the antithesis of its divine origin, that sovereignty, in its true sense, belonged only to God ("*al-ḥākim huw-allāh*").⁹³ After the final dissolution of the Ottoman Empire and abolishment of the caliphate in the Muslim world (1924), 'Alī 'Abd ar-Rāziq's "deconflationist *tabula rasa*" (Salvatore 1997:89) by his inquiry into the foundations of rule in early Islamic history then established a virtual watershed by claiming that Islam did not offer a blueprint for the reform of the state nor for society (*islām-dīn lā/not dawla*).

2.2) Conflationism and deconflationism—contextualised

The late Ottoman reformers, aṭ-Ṭaḥṭāwī's positive account of French civilisation (1826-36) or Muḥammad 'Alī's reforms (1811-33 AD) in Egypt notwithstanding, Western civilisation had not yet turned into the ultimate point of reference for the "Islamic liberalism" (Binder 1988) of Muslim intellectuals as al-Afghānī (d. 1897 AD), 'Abduh (d. 1905 AD) or Riḍā (d. 1935 AD). And how could it have been different? Deconflationism in Western contexts—also being an open-ended quarrel between the church and the state manifested itself in the slow process

⁹³ Cf. Khir (1995:14). The concept remained pivotal to the political theory of contemporary Islamist movements—most prominently it was formulated by Pakistani Abū Alā'a -l Mawdūdī and later reinterpreted by Seyed Quṭb of Egypt, cf. Akhavi (1997).

of secularisation which eventually gave rise to the institutionalisation of plurality (pluralism) in liberal democracies there. In the core area of the Muslim world, the Ottoman Empire (nominally including Egypt) the debate between conflationist positions and deconflationist ones was also open-ended at the time when 'Abd ar-Rāziq's book came out (1925 AD). It took the rise of deconflationism in the form of (mainly Arab) nationalism and related secular experiments (Arab/Islamic socialism, Ba'athism) and eventually their failure to firmly re-institute a conflationist position into the discourse on modernism. In the meantime, however, an important aspect had changed in that Western civilisation has by now become the ultimate point of reference for both poles of discourse. Implicitly or explicitly an imagined or true external scale of "the West" underlies arguments both of Muslim modernists/conflationists, and of secularists/deconflationists.

Today both discourses claim they are in minority position: Secularists feel—sometimes very justly—threatened by certain "Islamic" regimes or by militant "Muslim" movements in secular countries (cf. Iran for the former, Tunisia for the latter). Sometimes—like in Tunisia or Turkey—deconflationists seem to fear Islamists would want to transform society to a totalitarian Islamic state. If moderate Islamists deny this, secularists tend to dismiss this as a lie in the tradition of Shī'i *taqīyah*/disguise of motives.⁹⁴ Conflationists, on the other side, point to the overpowering secular reality both in their own countries, and especially in the West—"the West" being perceived as dominating the rest of the world.

Generally, representatives of both sides do not speak with each other but rather about the respective other. Not surprisingly, their topics are also different: deconflationists, often in view of threat to their own life, mostly speak up against militant Islamism. They rarely take notice of moderate conflationist positions while not only extreme Muslim activists but also moderate conflationists ("conservative Islamists" in the Egyptian context, cf. Ismail 1998) complain about the shortcomings of the secular, especially Western societies:

"Islam's superiority is tied to the moral corruption of the West, itself a cause of its supposed deterioration, bankruptcy, and inevitable collapse."⁹⁵

So, as much as one tries to understand Muslim political discourse in its own terms, one cannot ignore its recurring reference to an external scale—be it reflected or unreflected. In the words of Egyptian conflationist Abdelwahhab Elmessiri:

"...all the trends and movements, religious or secular, irrespective of their ideological inclinations and social or ethnic backgrounds, had turned the West into a silent and ultimate point of reference."⁹⁶

On the other side of the discursive spectrum, however, it is equally possible that the persisting invocation of "Islam" and "*sharī'ah*" today is only a defensive reaction to the deconflationist discourse without much of an innovative aspiration on its own. It is certainly true, that in the face of what Elmessiri (1996:151) calls "the imperialist secular epistemology" or Arkoun (1993) named the 'Hegemonic Reason' (both Islamic and Western), the need is felt to counter not only on a cognitive but also on a normative-structural level in order to establish an outright "Islamic matrix" (Sabet 1997:62). And indeed, from the 1970ies onwards

⁹⁴ Cf. Hassan's complaint on the mutual mistrust of motives (1996:184).

⁹⁵ Ismail (1998:219).

⁹⁶ Elmessiri (1997:51) and similarly M. 'Ammārah, cf. Kügelgen (1994:180-203).

there eventually developed a "hermeneutic field of political Islam" (Salvatore 1997:XV) on its own.

In order to prevent the conflationist discourse from *a priori* being disqualified for its purportedly "reactive"—even "reactionary"—thrust, it is important to understand its genuinely innovative, and in that sense even "modernist" aspect ever since al-Afghānī. Both the persistence and the potentiality of the discourse today cannot correctly be assessed without taking its genesis into account:

"The establishment of *Islam* as the banner of the public function of religion, on the one hand, and as a major key to the definition of a consensus of communication on the other was a direct offshoot of the recomposition of the indigenous intellectual field in response to colonialism and in the name of reformism."⁹⁷

The emphasis on one's own heritage/*turāth*, the claim on cultural authenticity/*aṣālah* (in the Arab context, cf. Jabri 1995), and condemnation of intellectual innovation as "Westernisation/*taghrīb*"—even as "Occidentosis/Westoxication"/*gharbzadegī*" (in the Iranian context, cf. Āl-e Aḥmad 1962) still structure the whole of the hermeneutical field of political Islam today.

One recent example was the debate of the 200th anniversary of Napoleon's intervention in Egypt (1798)—the Muslim world's first serious encounter with Western modernity. It is argued that Muslims were not allowed to discover Western civilisation on an equal footing—not by way of "*tathāqafah*/interacting between cultures ('Inter-kulturation')". Rather, the advent of Western civilisation in the Muslim world is today still interpreted in terms of a "shock of modernity/*ṣadmat 'l-ḥadāthah*."⁹⁸

Apart from the aspect of power, the philosophical implications of the confrontation between (contemporary) Western civilisation and Muslims societies was subject of a vivid debate in post-revolutionary Iran between the two philosophers Reḍā Davarī (Ardakānī) and 'Abd al-Karīm Surūsh.⁹⁹ Davarī regards the "West" not only as a political entity but rather as an essence determined by an ethical this-worldly humanism and by the separation of the state. A virtuous society of the type Davarī envisages, however, could not be based on this Western model of democracy, but rather on the axioms of guardianship and prophecy. Not even Western technology is regarded as value-free but as a means of subjugation. Such, the "West", represented by a "Western intellect" must, according to Davarī, be regarded as a holistic entity, perpetually dominating the non-Western societies. As a consequence, non-Westerners should not seek cultural exchange with Western cultures, let alone pragmatically pick single achievements in the technological, social, economic, or political realm.

Surūsh repudiates all of Davarī's holistic worldview as historically determinist. No such thing as 'the West' exists for him, non-Western societies are only confronted with individual Westerners. Conversely to Davarī and the 'Nativists' before him, Surūsh fears no dominance by 'foreign' influences, but on the contrary, advocates cultural exchange with Western civilisation. Challenging not only the orthodox approach to religious worldview by establishing the accessibility of the latter to contemporary scientific methods and interpretation from the perspective of current social and political problems, Surūsh also contests the clerics' monopoly

⁹⁷ Cf. Salvatore (1997:54, 81-95); first emphasis original, second mine.

⁹⁸ Cf. R. Būshlākah: *Al-Islām yastaw'ab al-ḥadāthah fī dākhilihi* ("Islam Contains Regeneration Within Itself..") In: *al-Hayāt* (London) March 10th, 1998, p. 19.

⁹⁹ On the philosophical background of this debate, cf. Boroudjerdi (1996:156-75).

of exclusive religious explanation. While his writings naturally incited fierce reactions from the '*ulamā*', his messages are echoed by the current Iranian president Khātāmī, who—a cleric himself—, against the background of an intimate personal knowledge of Western thought, advocates learning from the diverse historical experiences of Western societies, and particularly the American one:

"We feel that what we seek is what the founders of the American civilization were also pursuing four centuries ago. This is why we sense an intellectual affinity with the essence of the American civilization." ¹⁰⁰

Dichotomisations between the 'West' and 'Islam' or between 'traditional heritage/authenticity' and 'modernity' are also refused by Moroccan philosopher al-Jābrī as 'fraudulent problems/*mushkilah muzayyafah*'. By way of deconstruction/*tafkīk* of the authenticity/*aṣālah*-myth through critical inquiry into the Arab-Islamic heritage/*at-turāth*, he demonstrates e.g. that the question whether 'Islam' is 'secular' or still awaits secularisation, in reality pertains to the category of 'fake questions'. While insisting on the specificity of Arab-Muslim history in comparison to European history,¹⁰¹ he acknowledges both their mutual inter-penetration and the thoroughly modern condition of Arab societies today. Rather than a wholesale import of foreign concepts such as secularism, which was formed under specific historical circumstances, al-Jābrī opts for a renaissance and renovation of one's own—however strongly neglected—aspects of Arab-Islamic heritage. By nevertheless also taking advantage of the achievements (*tawẓīf muktasabāt*) from foreign thought, he claims to merely follow the "law" of renaissance ("*qānūn*" *an-nahḍah*) that made European renaissance successful.¹⁰²

The above outline of some aspects of the current intellectual debates has been necessary in order to understand that the secular/deconflationist and the non-secular/conflationist sub-discourses are intertwined and interdependent to an extent which suggests that a thorough process of mutual appropriation has taken place.¹⁰³ This will be further vindicated by the analysis of contemporary interpretations of various traditional concepts of pluralism (2.3.1 to 2.3.4).

2.3) Plurality as an object of Muslim political discourse: conceptions of pluralism as opposed to oneness and unity

In this section I will focus on the debate of concepts in the present religio-political debate in the Muslim world that are related to the question of how to cope with plurality peacefully. The inquiry is focussed more on the conflationist pole of the discursive continuum and on proposals concerning procedural and institutional accommodation of plurality. In a first step, I

¹⁰⁰ Cit. from his interview with CNN on January 7th, 1998,

<<http://www.un.int/iran/statements/other/other007.html>>, or cf. his address to the heads of Delegations to the Islamic Symposium on Dialogue among Civilizations, May 4th, 1999 <<http://www.un.int/iran/dialog01.html>>.

¹⁰¹ Particularly with respect to the evolution of a profane sphere of government in early Muslim history, cf. his dialogue with Egyptian philosopher Ḥasan Ḥanafī: *Ḥiwār al-maghreb wa 'l-mashreq*. <<http://www-user.uni-bremen.de/~bjtraut/hiwar.pdf>>, German translation>.

¹⁰² Cf. his interview to the Moroccan periodical *al-Muqaddamāt/Prologues* (1997) no. 10, p. 53 (Arabic part).

¹⁰³ Cf. Salvatore (1997) on the general Arab-Islamic context since Muḥammad 'Alī, Ismail (1998) specifically on the contemporary Egyptian debate, Dabashi (1993) and Boroudjerdi (1996) on the Iranian context.

will limit the references to the deconflationist position to only those arguments which are necessary to understand the innovative trait of the "moderate" conflationist approach.

2.3.1) '*Tawḥīd*/oneness of God' vs. political plurality?

The emerging political projects like that of exiled Tunisian opposition leader Rashīd al-Ghanūshī seek foundations for accommodating political plurality within Muslim societies on a basis explicitly different from that of purely utilitarian, "rational choice"- or "common sense"-considerations that are seen to prevail in liberal-democratic political systems.

From contemporary Muslim conflationist viewpoint, moral virtue is not so easily dismissed, since the result of this mode of governance—not only neutral toward, but devoid of any "values"—is held responsible for "Western" materially/technologically orientated and de-spiritualised culture. According to this view, policy-making for predominantly Muslim societies cannot be disinterested with respect to practical morality and social ethics. Contrary to the positivist acceptance of the supposed inherently conflictual nature of modern societies and the consequential setting up of a mediating agency in the form of the state, the "nature of the political" in this perspective is rather normative and holistic—it is "where politics and morality ought to be heading."¹⁰⁴

Contemporary conflationists do not necessarily subscribe to the proposition that Islam implies *dīn*/religion and *dawlah*/state at the same time (*Islām*—*dīn wa dawla*). Al-Ghanūshī, for example, repeatedly refuted the Tunisian government's allegation that he intended to re-erect the outdated "Islamic state" of the prophet-*cum*-head of state. However, even otherwise "moderate conflationists" like him insist upon a strong nexus between policy and morality on the basis of a redefinition of the *tawḥīd*/oneness (of god)-axiom:

"This great principle in Islam, which rejects a lot of dualities between the body and the spirit, between the mind and the spirit, between the individual and the society, between the man and the woman, between the contemporary life and the afterlife, between the worshipping of God and the economic system, between morals and economy...—the main gift of Islam to this world is that it gives to all these dualities something of order and some harmony among them... and within society itself... and within international politics."

The agent of this unity is the Muslim community/*ummah at-tawḥīd*. Ideally, it is governed by a single political regime, that derives its legitimacy from the supreme *naṣṣ*/text.¹⁰⁵ As a politician, however, al-Ghanūshī also settles for less than the ideal.¹⁰⁶

Genesis

Unlike any other Koranic stipulation or Islamic principle, the *tawḥīd*-axiom epitomises Muslim faith (and represents the only dogma there is in Islam for that matter). Literally *tawḥīd* (infini-

¹⁰⁴ T. Asad in an interview with Saba Mahmoud, cf. *Contested Politics* (Stanford) vol. 5 (1996) no. 1 <<http://shr.stanford.edu/shreview/5-1/text/toc.html>>, emphasis mine.

¹⁰⁵ Cf. al-Ghanūshī's interview with Tamimi (1998b:229).

¹⁰⁶ Inconsistencies in al-Ghanūshī's writings are often regarded as signs for the essential 'insincerity'. In fact, they seem to be based on his double-function as a writer and as a politician, cf. Tamimi (1998b:321ff).

tive II, of *w-ḥ-d*) means "making one". It either asserts the one- and exclusiveness of *Allāh* or—in a maximum interpretation—it denotes a (rather elusive) pantheism. By leaning on the latter interpretation, *tawḥīd* can also turn into "a norm guiding socially responsible selves" (Salvatore 1997:43). This shift of meaning from the (more or less personal and immediate) sphere of knowing God by systematic theology/*ʿilm* or by *maʿarifah*/religious experience onto to the worldly (public) sphere of social/political life can but subdue the latter under the former's holistic paradigm. Under this paradigm, i.e. within the frame of the religiously founded discourse, pluralism has had a long-standing tradition in the guise of various traditional concepts (cf. 2.3.2 to 2.3.4). Plurality within this frame of reference is no problem, but it is fiercely battled as soon as one leaves the grounds of this very wide scope and as purely anthropomorphic arguments or concepts enter the debate.

Diversity in Unity

Due to this holistic inter-relatedness of both spheres depicted above, opinions with regard to the political outside the scope of divine (not Koranic!) *tawḥīd*, may easily be dismissed as a heresy even if—or rather just the more!- they are bare of religious foundation. Just as in any other non-liberal understanding of politics (political conservatism, communitarianism) the *tawḥīdic* paradigm takes the idea of the political seriously in that it does not exclude the question of whether a specific policy is good or evil from an ethical perspective which is explicitly deprived of human disposal. It claims a strong nexus between the way to do politics—guide-lined by interpretation of divine revelation—on the one side and an ethically acceptable state of society ("justice") as outcome of policy on the other. In the critique of both the Western liberal political systems and the authoritarian governments in Muslim countries, the nexus unfolds from the other end of the argument: Because of the undesired outcomes of the respective policies something must also be wrong with the mode of governance. From this perspective, the de-spiritualised culture of materialism and the general loss of day-to-day-morality in Western societies is inevitably due to their way of doing politics, viz. by substituting ethical considerations by aggregating group interests and managing the high diversity of equally valid (secular) worldviews. Only for the price of denying all worldviews any general validity to those worldviews, thereby devaluating each of them, and by reducing political ethics to mere material considerations and to zero- and positive sum games can this potential conflict of opposed perspectives be defused. Defused but still virulent on the level of politics à la 'Who gets what, when and why', plurality—in this perspective—is rather perpetuated instead of accommodated or (in a maximum conflationist perspective:) anticipated.

Some conflationists even go as far as to establish a *tawḥīdī*-unification epistemology in order to counter Western style pluralism.¹⁰⁷ Choudhury (1994), for example, rejects the idea of pluralism explicitly on the ground that it denies any integration of or even interaction between sacred and profane law. Both spheres cannot be thought of independently from each other according to his "epistemic-ontic circular causation and continuity model of unified reality" (Choudhury 1994:496). Thus, the *tawḥīd* episteme attains a programmatic quality in that it becomes the governing principle for a future Islamic state for Moten (1996). *Tawḥīd* becomes the Islamic paradigm according to AbūSulaymān ([1982,1989] 1995) and in al-ʿAlwānī's (1995a) project to "Islamise" all knowledge/*Islāmiyat ʿl-maʿrifah*". The latter project

¹⁰⁷ Abul-Fadl (1995), Ragab (1996:29).

is naturally subjected to strong criticism from even the "moderate" conflationists' side within the Muslim political discourse.¹⁰⁸

As to the general modes of cognition, even rather deconflationist authors insist that diversity and the claim of oneness/*tawhīd* need not necessarily contradict each other. Arkoun, for example, upholds the oneness of what he calls the "Islamic fact" which is based on—but yet distinct from—the "Koranic fact" in that the former represents a factual unity of messages and advice emerging from the latter, i.e. certain axiological values emerge from the *Koran* "that constitute the bedrock of Islamic discourse" (Lee 1997:157). According to Arkoun (1984), there is, however, no privileged access to interpretation—let alone a possibility to ever terminate the process of Koranic explanation. On the contrary, the presumed "need to close" interpretation is—according to him—in itself proof for the openness and plurality of the tradition.¹⁰⁹ While Arkoun (1993) clearly criticises the hegemonic character of the "Islamic reason" which purportedly—ever since al-Ghazālī (d. 1111 AD)—eradicated all rationalist traces in orthodox Muslim thought and replaced it by theological speculation and ideological constructs, Abul-Fadl's (1995) balance sheet of the history of Islamic pluralism is less critical towards the own heritage:

"Historically, the Islamic paradigm of knowledge has proven congenial to the different modes of knowing. The legacy of the Bīrunīs, ibn al Haythams, al Ghazālīs, Ibn Rushds [!], Rāzīs and Suhrawārdīs is a monument to this capacity to integrate and accommodate the diverse modes or traditions within what is more of a synthetic rather than a syncretist whole." (13f.)

By enumerating mystics as al-Ghazālī, even illuminationists like Suhrawārdī side by side with "confessing" rationalist/anti-mystic Averroes, Abul-Fadl of course belittles the gross cleavages and even bloody conflicts between the protagonists of the different modes of knowing, starting at the latest with the assassination of the mystic al-Ḥallāj (922 AD).

As it comes to the reality of coping with concurring truths and their political implications, plurality regularly evokes the one, still very vivid trauma of Muslim history, the first civil war which ended with the Sunnī-Shī'i-schism of the Muslim world from the first Muslim century onwards. Orientalist Lewis observed:

"The names of [Shī'i-leaders, BJT] Ali, of Yazid are as contemporary as this morning's newspaper, more so than yesterday's."¹¹⁰

Far from being a theological schism in the beginning, the core of the problem at that time was a political one, namely the profane question of power, viz. the successorship of the prophet-*cum*-head of state (himself devoid of any divine quality) in managing the worldly affairs of the Muslim *ummah*/community. Unlike the catholic/protestant-schism of Christianity there is no widely accepted official acknowledgement of status quo, a "Westfalian peace-treaty" between the two confessions. In most countries of the Sunnīworld Shī'is are regarded as a 5th column of any given foreign power. It is the potentially political, not the theological dimension of plurality that is considered problematic. The leading Sunnī law institution, al-

¹⁰⁸ For recent overviews cf. Inayatullah (1996) and Ragab (1996). For early critiques cf. Mohamed (1994), AbuKhalil (1994) or Tibi (1995).

¹⁰⁹ Cf. Lee (1997:157).

¹¹⁰ Cit. from Brunner (1997).

Azhar in Cairo, in 1959 accepted the Shī'ī *Ja'afariyah maḍhab*/law school as equally legitimate as the four orthodox (Sunnī) *maḍāhebs*/schools.

Those orthodox *maḍāhebs* differ on a variety of subjects in Islamic law. So, contrary to popular assumptions, there is no consistent "body" of Islamic jurisprudence, hence no unified "Islamic" world outlook and most certainly no model of an "Islamic state" which otherwise conflationist authors readily admit (cf. Moten 1996). However, it is also an open question how wide the plurality of opinion within the framework of the *maḍāhebs in general*—as opposed to single issues—is. Especially considering the fact, that contrary to the historical "pluralism in the interpretation/*ta'addud ta'wīl*" of the sacred texts, in the political sphere of today, 'ulamā'/religious experts more often than not claim a monopoly of interpretation—always based on the same "grand old jurists", ash-Shāfi'ī, al-Ash'arī and al-Ghazālī (Abū Zayd 1992:11, 272).

Defusing both *tawḥīd* and plurality: semantic and epistemological implications of Muslim political modernity

Al-Ghanūshī is quite outspoken on a mode to do politics that is flexible in that it could produce innovative solutions that are regarded both appropriate to problems of contemporary society. He also endeavours to render Muslim politics legitimate in that it refers to the Koran and *sunnah*/prophetic tradition, viz. to ethical considerations which are withdrawn from human disposal. Because the interpreters of the sacred texts, the *fuqahā'*/Muslim jurists, in modern times have more often than not bowed to the will of the worldly powers, all interpretation became arbitrary and lost most of its original legitimacy, significance and flexibility. Al-Ghanūshī now suggests to politicise the traditional arrangement of divergent interpretation by the *maḍāhebs* so that the content of these interpretations is open to public "negotiation". Again, "pluralism" in this understanding does not translate into an ethically uninformed public deliberation which is the commonly held critique vis-à-vis "liberal" societies. Rather, al-Ghanūshī advises to introduce the *tafāsīr*/traditional commentaries of the Koran into the political arena. Then, it is up to the electorate to choose from policy options that are derived from the concurring interpretations of the Koran. Analogously, but in more general terms, Iranian 'Abd al-Karīm Surūsh insists on the relativity of all religious knowledge/*ma'arefat-e dīnī*. And while the criteria of judging between correct and incorrect interpretations of the texts falls upon an 'enlightened' scholarly community, religious knowledge is in principal public, just as the criteria for the judgement of correct and incorrect knowledge must be public and by no means monopolised by the clerical establishment.¹¹¹ As a result, neither religious institutions nor a religious government provide for the spiritual and ethical foundations of a society, but society itself determines the degree to which its life shall be in accordance with these traditions. Naturally, al-Ghanūshī and Surūsh's suggestions to 'democratise' the interpretation of religious interpretation incited severe criticism from those claiming the essential unity of religious thought as a basis for cohesion of Muslim societies.

The latter's claim, however, is vindicated on the every-day semantic level of language, where the two Arab notions of *tawḥīd*/oneness on the one side and *ta'addudiyah*/multiplicity on the other appear as plain antagonists. In the face of *tawḥīd*'s (conflationist) incarnation, i.e. the *ummah*/Muslim community with their strong religious connotations, both *ta'addudiyah* and

¹¹¹ For Surūsh's critique of the clerical establishment in Iran, cf. Vakili (1997).

with it the notion of *ḥezb*/'(political) party' prompts reflex-like associations with loathsome difference/*ikhtilāf* and division/*tafarruq*. A maximum conflationist view holds that "there can be only one party in Islam, and that is the party of God (*Ḥezballāh*) which is opposed by only one other party, that of the devil (*Ḥezb ash-shayṭān*)."¹¹² In order to forewarn of cleavages in society, extreme conflationists regularly quote the Koran: "Inna ḥaḍīhi ummatukum ummatan wāḥidatan/verily, this community of yours is a single community" (Surah 21:92).¹¹³ Conversely, reformists, quote a just as well known and accepted *ḥadīth*/prophetic saying: "Ikhtilāf al-ummah raḥmah/blessed are the differences within the ummah". And with reference to the Koran itself and to the orthodox *tafāsīr*/qur'ānic commentaries, Egyptian Muḥammad Salīm al-ʿAwwā, contends that the idea of unity in the Koranic context only refers to oneness in religion and belief, not to politics. According to him, applying this concept to imply political oneness, as opposed to political pluralism, involves a "distortion of meaning."¹¹⁴

Al-ʿAwwā's counterpart, Egyptian writer Muḥammad ʿĀmmāra, attributes the negative connotations of *ḥezb* to citations from the Koran like: "Fa taqaṭʿaw āmrūhum bainahum ḡuburan kullu *ḥezbin* bimālādīm fa riḥūbūna." (23:53): they cut their affair (of unity) between them into sects: each *party* rejoices in that which it has."¹¹⁵ Al-ʿAwwā, on the contrary, names just as many Koranic verses that mention *aḥzāb* (plural of *ḥezb*) in a neutral context (e.g. *Surah* 18:12).

The struggle with plurality—is it thus "merely" about semantics? Quantitatively speaking, the answer is unfortunately yes:

"It should be observed..., that many controversies surrounding Islamic thought focus so heavily on semantics, on names for ideas and persons, that the real issues often disappear from sight... the whole confrontation [between conflationists and deconflationists, BJT] sometimes seems like so much posturing, where the real choices are never clarified or faced."¹¹⁶

On the other hand, in the reality of today's political systems in the Muslim world, it is no accident, that Muslim political movements still consistently refuse to label themselves "party/-*ḥezb*". If regimes in the Muslim world admit political organisations other than their own unity party at all, Islamic movements prefer labels like *jamaʿah*, or derivatives of the verb "*jamaʿah*/grouping together" like the Yemenite Reform group, *Tajammuʿ al-yamanī lī-l-islām*. Similarly, while Iranian president Khātāmī advocates the establishment of a civil society and political development, none of the currently identifiable groups and movements is named party/*ḥezb*. Along the same lines, Sudan's 1998 law on political associations employs the newly created term of *tuwālī*¹¹⁷ *siyāsī* in lieu of political party.

¹¹² Kramer (1987) cit. from Krämer (1995:117).

¹¹³ Cf. Yazbeck Haddad (1995:16).

¹¹⁴ In Tamimi (1993:74).

¹¹⁵ Trad. ʿAwwā, emphasis mine. "(...)ils entre-déchirèrent leur (observance) selon (plusieurs) Ecritures, (...)". trad. by Berque (1995:366).

¹¹⁶ Filaly-Ansary (1996:78).

¹¹⁷ From the 5. derivation of *waliyā*/to govern, administrate, *tawālā*/take over responsibility cf. Wehr (1985:1437,1439). On the difference in the Sudanese context with respect to the new constitution, cf. the interview with H. at-Turābī 1998 <<http://www.sufo.demon.co.uk/cons001.htm>>.

In a more general perspective, al-Jābrī holds the Arab language as such to be incapable of representing the political and social conditions of contemporary society. In his view, Islamic sciences such as theology and law historically developed alongside the Arab language. The latter determines to a great degree the methodology not only of these sciences, but also the specificity of Arab-Muslim thought through the centrality of the *qiyās*/analogy-principle. Deduction from the holy texts, instead of free reasoning/*ijtihād*, a historiography that up to today merely records the history of diverse teachings in lieu of inquiring into their genesis and socio-economic context opened the door for "possibilitism/*jawāz*" or "*tajwīz*" in Arab-Islamic thought.¹¹⁸ Because of this epistemological 'blind eye', the representation of any empirical reality—political, social or even natural—in Islamic thought remains blurred—and biased toward the metaphysical. Against this background, basic ethical considerations are always implicit in everyday discourse on even the most 'profane' political and social problems. This simple fact must not be neglected in the later assessment of the following traditional concepts which were originally not designed for the modern condition, but may—in modernist interpretation—just the more acquire a function in the accommodation of plurality.

2.3.2) '*Ijtihād*/individual reasoning' and innovation of religious thought¹¹⁹

One case in point is the concept of "*ijtihād*/individual reasoning". The term *ijtihād* in the strict sense of its origin in Islamic jurisprudence denotes the application of a variety of existing rules or even the establishment of new rules in the ethical spirit of revealed law to a given juridical problem. One reason for the recurring invocation of this concept may be seen in its undisputed nature as a religious duty of the Muslim community/*farḍ kafāʾī*—in "urgent cases" even as a duty of each single Muslim/*farḍ ʿaynī* (Kamali 1995:467, 490).

Other than mere imitation/*taqlīd* or analogy/*qiyās* on the basis of the Koran and *sunnah*/-prophetic tradition, *ijtihād* in the history of Islamic jurisprudence mostly entailed a fair degree of *raʾy*/personal opinion (cf. also 2.3.2) thus producing only *ẓann*, fallible opinion which is ideally to be authorised by *ijmāʾ*/consensus of all the community in order to achieve inerrancy. De facto, however, *ijmāʾ* always denoted a consensus only of the jurists/*ulamāʾ*.¹²⁰

Even the orthodox Sunnī law schools differ widely as to the degree of personal freedom in *ijtihād*—the *Ḥanbalī*-school being the most restrictive, the *Ḥanafīs* the less restrictive.¹²¹ Within the Shīʿī law school, the *Jaʿafariyah*, the rationalist tendency of the *Uṣūlīs* eventually dominated over the literalist *Akḥbārīs*—unfortunately by methods that today would be considered as "rationalist fundamentalism": The founder of Shīʿī orthodoxy, Wāḥed Behbahānī (d.

¹¹⁸ Jabri (1995:133-40), Labdaoui (1993:142-4). By neglecting the cognitive achievements of Islamic philosophers like Averroes, a strict conceptualisation of cause and effect lacks in Arab-Islamic thought. Instead, anything may happen anytime—without external cause/*sabab* apart from the creator, *Allāh*. Contemporary Egyptian conflationist Elmessiri (1997:60), for example, maintains that a "loose/wide rationality/*sababiyah fadādah*" is an indissoluble "middle analytical category".

¹¹⁹ Pieces of this section will be published as part of 'What Makes Traditionalist Muslim Legal Thought Modern? Collective Memory, Islamic Legal Tradition, and the Concept of *Ijtihād*' in: Neuwirth/Pflitsch (forthcoming)

¹²⁰ Cf. SEI (1995).

¹²¹ It remains contested whether for the founder of the last of the schools, ash-Shafiʿī, *ijtihād* and *raʾy* were one and the same thing, cf. affirmatively SEI—cf. conversely Khadduri ([1961] 1997:295-303) and Bakar (1994) who that contend it was limited to *qiyās*/analogy only.

1790), for example, declared anyone an unbeliever who dared to question his doctrine of *ijtihād*.¹²²

Conventional wisdom of both, orthodox '*ulamā*' and most Western orientalist still holds that the procedure of *ijtihād*/"individual reasoning" was banned from the Sunnī world with the institutionalisation of the four *maḏāheb* in the 9th century AD. Allegedly, afterward mere *taqlīd*/imitation within the legalistic framework of these schools was possible.¹²³ And indeed, only in 1985 the law academy of the Rābiṭat 'l-'ālam 'l-islāmī/League of the Islamic World formally "reopened" the "gate" of *ijtihād*. However, many of the early as well as contemporary Muslim "modernists" contend that the practice of *ijtihād* actually never came to a halt. Indian philosopher Muhammad Iqbal wrote as early as 1962 in his "Reconstruction of Religious Thought in Islam":¹²⁴

"The closing of the door of *ijtihād* is pure fiction suggested partly by the crystallisation of legal thought in Islam, and partly by that intellectual laziness... which turns great thinkers into idols... modern Islam is not bound by this voluntary surrender of intellectual independence."¹²⁵

And indeed, important contributions to Muslim political theory of the 20th century which are now considered 'canonical' like Seyed Qutb's "*Adālat 'l-ijtimā'iyah fī 'l-islām*/Social Justice in Islam" (1948, ⁵1964) are at least implicitly based on *ijtihād*.¹²⁶

Only recently a different perspective regarding the methodology of innovation emerged from the Iranian context against the background of the relatively high degree of monopolisation of all legal interpretation by the '*ulamā*', since the Iranian revolution in 1979.¹²⁷ Refusing to embark on the legalistic obsession in contemporary Muslim reformist thought, Surūsh advocates a clear differentiation between immutable religion, with *sharī'ah* at its core on the one side, and dynamic religious cognisance/ma'refat-e dīnī, i.e. all human and therefore in principle fallible knowledge of religion, on the other.¹²⁸ While the operational boundary between the two spheres remains opaque, Surūsh, much like Indian philosopher Iqbal, pleads for a broader approach to the contemporary understanding of religion.

Based on the notion of a *feqh-e pūyā*/dynamic Islamic law—as opposed to *feqh-e sunnatī*/traditional law—Surūsh suggests to make use of the methodology of modern sciences, especially social sciences and humanities in the interpretation of religion. Religious knowledge is dynamic in that:

¹²² Cf. Halm (1994:129). While the *ijtihād*-doctrine of the *uṣūlī*-school was further developed in Iran after the revolution of 1979 and extensively used by the '*ulamā*' (cf. supra 1.2.4).

¹²³ Nasr ([1966,1988] 1993:127,211), Hartmann (1997).

¹²⁴ P. 178, for contemporary modernists cf. Kamali (1994, 1995), Moten (1996).

¹²⁵ Iqbal (1968:178).

¹²⁶ Akhavi (1997:383) maintains that the Arabic root '*a-d-l*' "simply did not reflect within its rich tradition such a thoroughly anthropocentric concept as social justice." Rather, in its original context, '*adl*' denotes wisdom (mostly that of *Allāh*) and justice only in the sense of impartiality in the face of two disputing parties. Cf. also Qutb's misreading of "*ḥukūmat-e ilāhiya*/divine sovereignty" into "*ḥākimiyyat allāh*/rule of god" and al-Ghanūshī's subsequent reassessment of the latter as mere 'rule of law' (Tamimi 1998:39).

¹²⁷ Cf. supra 1.2.4.

¹²⁸ Cf. Surūsh (1995:242).

"...this form of knowledge is, like other forms of knowledge, subject to all the attributes of knowledge. It is human, fallible, evolving, and most important of all, it is constantly in the process of exchange with other forms of knowledge."¹²⁹

According to Surūsh, the two opposed epistemic spheres of interpretation, the traditional-static sphere on the one side and the dynamic one on the other, permeate into society by mediation through their respective exegetes: the traditional '*alim* (religious scholar) personifies the "backward perspective/*negah-e pīshinī*" of the "pious society" (*jāme'e-ye dīndārān*). Conversely, the "enlightened intellectual/*rushanfekr*" represents a "forward outlook/*negah-e pasīnī*" for a society which is capable of regarding itself from an outward perspective, thereby allowing for a radical plurality of worldviews based on diverse sources of knowledge.¹³⁰ The problem with this radical plurality lies less in a potential collision with the *tawhīd*/oneness-principle (cf. 2.3.1), but rather in the fact that those sources of knowledge are regarded as 'foreign' (cf. 2.3). It is therefore of utmost importance for the credibility and potential success of any reformist project to firmly establish its authenticity within its own historical, philosophical, or semiotic heritage and to determine its stance toward 'borrowing' from other sources.

To borrow or not to borrow?

Moderately conflationist authors do not object to borrowing, albeit amalgamating with the Islamic heritage, scientific approaches (Surūsh), epistemological foundations (al-Jābrī) or, even political-institutional procedures and tools (al-Ghanūshī) from the West in order to cope with contemporary phenomena such as political plurality in Muslim societies. For precisely this reason, they are subjected to reproaches of being "Westernised" at least, or even "heretic". At best, their respective writings are denounced as "trivialization of the fundamental principles of an Islamic political system" (Moten 1997).

Al-Jābrī, again from a more philosophical perspective, calls for a two-pronged approach: For a clear rupture with the uncritical way of relating to the one's own historical and philosophical heritage/*at-turāth*. But while he considers the epistemological foundations ('contenu cognitif') of (orthodox) Islamic philosophy outdated, its ideological matter ('contenu idéologique'), on the contrary, may still be a source of inspiration for today's political thought.¹³¹ Thus, while in the ideological realm there exists the possibility of choosing from different political options, taking into consideration the qualitative difference (*takhtalef ikhtelāfan naw'īan*) in the condition of contemporary societies as compared to traditional ones, there is no alternative to today's Western 'cultural model'. But instead of wholesale adoption of this model, Jābrī pleads for an *ijtihād* which keeps pace (*al-ijtihād al-muakeb*) with these internal changes. Such a contemporary *ijtihād* requires both, an aptitude in the mastery of 'contemporary sciences, their cognitive foundations and findings' just as much as a command of the (Arab) language and religious sciences.¹³² It appears to be the latter then, that have to take a lead in the modernisation/*taḥdīth* of Arab reason and in the re-foundation/*tajdīd* of Islamic thought by critical re-

¹²⁹ Cit. from his interview with M. Sadri in *The Iranian*, May 1999

<<http://www.iranian.com/BTW/1999/May/Soroush/index.html>>. On Surūsh's epistemology, cf. Cooper in Cooper et al. (1998:38-57).

¹³⁰ Surūsh in an interview to the Iranian periodical *Jāme'e*, June 1998 <<http://www.seraj.org/part1.htm>>.

¹³¹ Jabri (1995:159-61).

¹³² Cf. his interview to the Moroccan periodical *al-Muqaddamāt/Prologues* (1997) no. 10, p. 53 (Arabic part).

appropriation/*imtilāk* of its heritage "from within/*min ad-dakhīl*". Al-Jābrī particularly refers to the neglected tradition of the critical rationalism of Averroes (d. 1198 AD) and others like Ibn Ḥazm (d. 1064 AD) and ash-Shāṭibī (d. 1388 AD).¹³³ As to the foundations for the pivotal role of human reason/*al-'aql* in divine revelation, al-Jābrī—contrary to conventional wisdom—maintains that they were not laid down by the early *kalām*/theology of the *Mu'tazilah*-school.¹³⁴ Rather, human freedom manifests itself prior to all history as divine determination in the Koran and *sunnah*/prophetic tradition.¹³⁵

While always remaining on a rather abstract level, al-Jābrī thus tackles the task that is generally considered as the primary desideratum of Muslim modernism, namely the establishment of a methodological connection between contemporary political and social challenges on the one hand and traditional religious thought on the other. Nurcholish Majid, leading Muslim conflationist thinker in Indonesia, specifically refers to the concepts of democracy, human rights, constitutionalism, freedom of expression and association. His critique of the earlier Muslim modernists is precisely that they failed to find an "organic relationship" of these ideas with Islam.¹³⁶

With respect to the sphere of law, Indian jurist 'Abd ar-Raḥmān Doi¹³⁷ depicts the general framework for establishing this relationship as follows:

"...one will be driven to English, French or German legal systems and borrow from them in order to find a solution to our legal problems. Any attempt of *Ijtihād* to re-interpret the Islamic legal principles... to suit the changed social conditions of our time will not be objected to, but mere change and departure from the Koran and Sunnah in order to import French, English or Italian law... will amount to disbelief."

Still more difficult than establishing a general principle for *ijtihād*, is its actual operation in concrete political, social and juridical contexts.

Ijtihād applied: conditions and constraints

In order to come to more concrete procedures for the application of *ijtihād* one has to take into account its origin in Islamic jurisprudence. Therefore, specific stipulations with regard to its field of application, are to be discovered in the respective writings on law.

Expressing a conflationist position *par excellence*, Afghan law professor Kamali (currently teaching in Malaysia) negates the commonly held distinction of *ijtihād* as a source subordinate to the Koran and *sunnah*. He explicitly establishes that the sources of Islamic law are

¹³³ Cf. Kügelgen (1994:270f) .

¹³⁴ *Mu'tazilah* designates a theological school starting with the theologian H. al-Baṣrī (d. 728 AD) and becoming official doctrine of the 'Abbasid caliphs al-Ma'mūn and al-Mu'taṣim (813-42) before being declared heresy by al-Mutawakkil (842-47). It is commonly considered as 'early Islamic enlightenment', cf. Nagel (1994:112f), Corbin (1986:156) The historical fact that this first rationalist current in Muslim history usurped power and turned rationalism into a dogma, is held responsible for the common Muslim's aversion vs. most later attempts of introducing supplementary cognitive foundations to orthodox Islam: "...rationalism came to be associated not with tolerance but with authoritarianism and intellectual repression," Inayatullah (1996:6).

¹³⁵ Cf. Gaebel (1995:40-42).

¹³⁶ Cit. from Saeed (1997:293).

¹³⁷ Cf. Doi (1997:471), he currently teaches in Nigeria.

on the one hand "essentially monolithic"¹³⁸ thus implicitly maintaining *tawhīd*/oneness-dogma:

"The essential unity of the Sharī'ah lies in the degree of harmony that is achieved between revelation and reason. *Ijtihād* is the principal instrument of maintaining this harmony."

On the other hand, the dynamic character of *ijtihād* is stressed in that it is a "continuous process of development" whereas the "*nuṣūṣ*/(holy) texts" remain static (Kamali 1995:463):

"*Ijtihād* continues to be the main instrument of interpreting the divine message and relating it to the changing conditions of the Muslim community in its aspirations to attain justice, deliverance and truth".

To which issues of life may *ijtihād* then be applied? Under the "sharī'atic paradigm" two different domains are to be identified in this respect: In the first (smaller) domain a "unity of truth" is presumed and *ijtihād* may in principle not be applied (a), whereas in the second (b) a "plurality of truths" is assumed (Kamali 1995:485):

a) *Ijtihad* may in principle not be applied to the sphere of *ḥaqq allāh*/god's law (465ff):

- with regard to the essentials of creed, i.e. the questions concerning the prophethood of Muḥammad and the oneness of *Allāh* (the *tawhīd*-dogma);
- with respect to the obligatoriness of worship/*ṣalat*, and other pillars of faith (*ʿibadāt*) like: *zakāh*/alms tax, *ḥajj*/pilgrimage and *ṣawm*/fasting.
- In accordance with orthodox Sunnī tradition, Kamali also includes penal law/*uqūbāt* (including *ḥudūd*). Muslim reformists, however, disagree widely on this classification (cf. infra).
- *Ijtihād* may not be applied to matters of pure intellectual (*ʿaqlī*) or customary (*ʿurfī*) concerns. Matters that are "perceptible to the senses (*ḥissī*) and do not involve the inference of a *ḥukm sharaʿī* [judicial decision, BJT] from the evidence of the sources" are precluded from *ijtihād*. In short, those matters that are not worth of any ethical consideration, at all...

b) In principle, *ijtihād* may be applied to all temporal matters or, alternatively in a narrow sense, to all matters in which no decisive ruling is found in the sources. This sphere of law is commonly called "*ḥaqq adamī*/human law" or "*ḥaqq muʿamalāt*/law of the social sphere". Al-Jābirī, by referral to a prophet's *ḥadīth* ("You, [the believers] are more knowledgeable regarding the matters of life [than I am]") regards all matters of life/*al-ḥayāh* (as opposed to religious worship) as accessible to renovation/*tajdīd*, thereby suggesting a 'concealed secularisation'.¹³⁹

The distinction of a less sacred sphere of law from a wholly sacred one has up to today hardly—except for rare cases—¹⁴⁰been contested. It is even maintained that the orthodox differentiation of "*farḍ ʿain*/individual obligation" of the believer from "*farḍ kafāʾī*/obligations of the community as a whole, i.e. the differentiation of obligation that are indispensable viz. incumbent for "salvation" and others that may be dispensed, or delegated to others, "pos-

¹³⁸ Cf. Kamali (1995:463).

¹³⁹ Cf. Gaebel (1995:36f).

¹⁴⁰ Cf. Saeed (1997:282) on a Ḥanbalī jurist (in 800 AH) who maintained that *maṣlaḥah*/public interest could override even a clear text of the *nuṣūṣ* (in cases other than worship).

sesses all the intellectual and moral justification for the bifurcation of the law into a civil and public and a religious and private sphere."¹⁴¹ In the absence of a church-like institution, this classification represents the core of the argument that Islam is a 'secular religion'.

Against this background and following a well established argument in moderate conflationist discourse,¹⁴² al-Ghanūshī, contrasts static *sharī'ah* to dynamic *feqh*/jurisprudence:

"Because reality is mutable, legislation varies accordingly. However, this evolution, in normal conditions, does not transgress God's limits, that is, the ultimates of religion, which constitute a general religious and moral framework, within which life and the activity of reason evolve. Time and time again, that framework had been constricted, as a result of Muslims treatment of an ever renascent reality with a worn, decrepit Fiqh (jurisprudence). As if Fiqh were equivalent to Shari'a, although Shari'a is unalterable, while Fiqh is inconstant. Every age constructs its proper Fiqh (jurisprudence), in other words, it devises its Islamic solutions, to the arising political and economic problems."¹⁴³

In order to counter maximum conflationist claims aimed at restricting even the freedom of *ijtihād* in the sphere of *mu'amalāt*, al-Ghanūshī maintains the idea of *farāghāt*/spaces—areas left for humans to fill in accordance with the respective contemporary requirements as opposed to the sphere of the absolute, *dīn*/religion (Tamimi 1998:42f). By accepting matters of 'aqīdah/faith, 'ibādah/worship, *akhlāq*/morality and even *hudūd*/body-penalties as "sacro-sanct" he does not in principle question the orthodox dichotomy. By way of this trade-off, al-Ghanūshī is able to conserve *murūnah*/flexibility of *ijtihād* for the profane, the relative sphere of *siyāsī*/politics.

The only means of subverting the *farāghāt*/*siyāsī-dīnī*-dichotomy is to be seen in shifting the seemingly strict border between the two spheres of law.

Based on the reknown theorist of public administration al-Māwardī (d. 1058) and on philosopher Ibn Rushd/Averroes (d. 1198 AD), Pakistani scholar Nyazee in his "Methodology of Ijtihad" (1994) tries to establish a third category, *ḥaqq as-saltānah* or "*ḥaqq as-sultān*/right to rule" or "law of the ruler" alternatively, independently from both *ḥaqq allāh* and *ḥaqq mu'amalāt*. By contending that the right of God is distinct from the right of the state, Nyazee provoked a strong rebuff even from the otherwise "moderate" conflationist Kamali.¹⁴⁴

Indonesian neo-modernist Munawir Syadhali openly refutes classifying even *zakāh*/alms tax (pertaining to the five 'pillars' of Islam!) on the basis of the old dichotomy. Rather than deciding the question by himself, he refers the decision to a broader consensus/*ijmā'*.¹⁴⁵

The *dīnī-siyāsī*-borderline is also at least implicitly transgressed in a *context-based ijtihād*. Most of the authors investigated here insist upon the fact that the authoritative *nuṣūṣ*/holy texts were not sent down in a "socio-political vaccum". Arkoun, al-Jābrī, Ḥanafī, Abū Zayd,

¹⁴¹ Manzoor in a paper delivered to the Seminar on "Islamism, Pluralism and Civil Society" organised by the International Forum for Islamic Dialogue ("Islam21"), London April 23rd, 1999 <http://www.islam21.org/main/23apr_manzoor.htm>.

¹⁴² Cf. likewise Egyptian philosopher Ḥasan Ḥanafī in his dialogue with M. 'A. al-Jābrī: *Ḥiwār al-maghreb wa 'l-mashreq*, <<http://www-user.uni-bremen.de/~bjtraut/hiwar.pdf>>, German translation.

¹⁴³ Cf. his interview to Intraview, February 10th, 1998 <<http://msanews.mynet.net/intra2.html#sect2>>.

¹⁴⁴ In the *American Journal of Islamic Social Sciences* (Herndon/VA) no. 12 (1995) vol. 3, p. 413-18.

¹⁴⁵ Cf. Saeed (1997:290).

Surūsh and most other moderate conflationists are explicit on the political, social, and economic conditionedness of the revelation. While some apply straightforwardly Western methods of deconstructivism (al-Jābrī) or semiotics (Abū Zayd) in order to explore the specific context of revelation, al-Ghanūshī starts from the orthodox science of the purposes of *sharī'ah*, '*ilm maqāṣed ash-sharī'ah*', whose objective, according to al-Ghanūshī, was to prevent the rulers from exploiting the literal meaning of the text.¹⁴⁶

Similarly, the '*ilm asbāb an-nuzūl*' traditionally merely denoted the science of historiographic investigation into the occasions of the divine message as revealed to the prophet. Nurcholish transforms this well established discipline into one of embedding revelation into the cultural, political, economic, social, legal and moral context of its time. Thus, instead of literal/scriptural application, Nurcholish even attributes merely symbolical meaning to *ḥudūd*-stipulations (commonly assigned to the *ḥaqq allāh*) for contemporary times. Also with regard to *ḥudūd*, Syrian Muḥammad Shaḥrūr (1992) in an etymological analysis invites a similar conclusion in that the contemporary employment for *ḥadd* (singular of *ḥudūd*) in the Arab language denotes "frontier/border". For him, penalties prescribed in the Koran thus display only a maximum punishment. And since social conditions have changed so much today, *ḥudūd* assign merely hypothetical sentences.

Apart from the *ḥudūd*-issue a similarly sharp controversy arises from the specific circumstance of daughters being entitled to only half the endowment that sons are entitled to, according to "clear" Koranic text (cf. Koran 4:11 and other prescriptions which favour men over women). By applying "contextual *ijtihād*", however, Abū Zaid (1996:185-89) departs from the literal understanding by indicating the innovative thrust of the stipulation in the historical context of pre-Islamic tribal society, which regarded women as objects of trade. In the end, Abū Zaid also arrives at a more symbolical interpretation of the text by stressing the dynamic aspect of the respective revelations that eventually require a full emancipation of man and woman.

Al-Jābrī also tackles this problem by way of establishing the historical context of the incriminatory stipulation. He subjects today's meaning of such stipulations to the "*maṣlaḥah*/common good" of the Muslim community. He refers, for example, to the practice of some Moroccan tribes in the 19th century AD, who, despite its apparent contradiction to the *sharī'ah*, abolished women's right to inheritance completely in order to avoid inter-tribal quarrel—a threat to the whole Muslim community. By regarding *maṣlaḥah*/common good as the core purpose of divine revelation, al-Jābrī may in fact circumvent the latter's explicit provisions as laid down in the *sharī'ah* (except for provisos regarding worship/*ibadāt*) without in principle denying its validity.¹⁴⁷

Who is entitled to the exercise of *ijtihād*?

Most conflationists agree on the personal qualifications the *mujtahid* (the one who accomplishes *ijtihād*) must meet: First of all he has to be an "active" Muslim performing all duties of worship and he also must be a "competent person of sound mind who has attained a level of intellectual competence which enables him to perform independent judgement." He not only

¹⁴⁶ Cf. Tamimi (1998b:289).

¹⁴⁷ Cf. a lucid discussion of this aspect implicit in al-Jābrī's writings, Gaebel (1995:33-39).

has to be "knowledgeable in the various disciplines of religious learning".¹⁴⁸ Kamali even goes further in closing the ranks of the eligibles by referring to the *ḥadīth*/prophetic tradition claiming that the '*ulamā*' are the successor of the prophets (472). Thereby he asserts that only jurists may practice *ijtihād*. From a historical point of view, however, scholarly qualification has not been the only criterion for the legitimacy of *ijtihād*: Not only from rationalist *Mu'tazilite* but even from orthodox *Ash'arī* perspective, *ijtihād*, with the necessary conditions present and under the legitimate presumption that truth may be multiple in the '*mu'amalāt*/sphere of social relations' even an *ijtihād* errant in result is rewardable both for the sake of intellectual achievement and for the contribution to the eventual elaboration of a better solution (by way of consultation/*shūrā*, cf. infra 2.3.3).¹⁴⁹ On this matter, al-Jābrī presents the jurist Ibn Ḥazm al-Andalusī (d. 1064 AD) as an eminent authority against the mere imitation/*taqlīd* of earlier and established views and as an advocate for a plurality of interpretations: *ijtihād* not only being a right but an individual duty of each Muslim:

Il n'est permis à nul homme... d'imiter quelqu'un d'autre, vivant ou mort, mais chacun est tenu d'accomplir, autant qu'il le peut un effort interprétatif (*ijtihād*)."¹⁵⁰

Those intellectually incapable of meeting their responsibility are to consult jurists, but the latter are obliged to explain their method of interpretation to the client who, in turn, decides on the appropriateness of this interpretation. Al-Ghanūshī draws on this orthodox practice whereby single scholars proposed the results of their *ijtihād* to the people, who made the final choice. Al-Ghanūshī argues that the establishment of the (now) canonical four Sunnī law-schools, thus are to be considered as "societal projects" in that they materialise out of the interaction of Islam with specific social and cultural traditions. If the latter are changing, the changes have to be accommodated by the juridical school, lest it loses its hold in public.¹⁵¹ Specifically referring to the case of the contemporary Saudi system based on the *Wahhābī* interpretation of law, al-Ghanūshī maintains that the right of *ijtihād* remains open, so no one may monopolise interpretations of religious texts.¹⁵² Similarly, UK-based Saudi dissident Muhammad al-Mass'arī (1997) contends, every single Muslim—man or woman—is empowered to *ijtihād*. A similar idea lies behind the notion of each 'citoyen musulman' as an *ex officio* a *faqīh*/expert in Islamic law.¹⁵³

Jābrī suggests, however, that a contemporary understanding of the qur'ān (*faḥm al-qur'ān*) takes for granted a (minimum) cognisance of the history of revelation (*tārīkh an-nuzūl*), i.e. the principles of abrogation (*nāsikh*/abrogating and *mansūkh*/abrogated).¹⁵⁴ But once there is an agreement on the formal conditions of *ijtihād*, then up to which degree may individual reason, or reason in general, alter the literal understanding of the original?

¹⁴⁸ Cf. Kamali (1995:473)

¹⁴⁹ Cf. Kamali ([1989]1995:46,63 and 1994:486).

¹⁵⁰ Cit. Ibn Ḥazm from Jabri (1995:113).

¹⁵¹ Cf. his interview with Tamimi (1998b:202).

¹⁵² Cf. his interview to *al-Ahrām Weekly*, December 24th-30th, 1998
<www.ahram.org.eg/weekly/1998/409/debate.htm>.

¹⁵³ Cf. Herzenni (1997:23).

¹⁵⁴ Cf. his interview to the Moroccan periodical *al-Muqaddamāt/Prologues* (1997) no. 10, p. 46 (Arabic part).

Ijtihād, "ra'y/personal opinion" and reason

"Ra'y/personal opinion" is pivotal for the whole concept of *ijtihād*. In strict juridical jargon, *ijtihād* is nothing else than *ikhtilāf ar-ra'y*/difference in opinion.¹⁵⁵ *Ra'y* is thus defined as an opinion on a matter which has not been regulated by the Koran or *sunnah*/prophetic tradition and thus holds an element of arbitrariness. In a broader semantic analysis, the Arab notion of "ra'y", is applied to things which cannot be seen, "but are known through the application of reason, intuitive judgement, and the light of one's heart" (Kamali 1994:62). Without having a proper methodology of establishing its validity (other than by *ijtihād* and subsequent *ijmā'*/consensus), *ra'y* is also preliminary to knowledge and it is informed and directed by signs which themselves are subject to investigation and rational conclusion.

Reason/'*aql* itself, however, is relativised to the rôle of a mere complement of traditional narration/*naql*, and mysticism/*taṣawwuf*—all three being widely accepted modes of knowledge (albeit not to all—even otherwise moderate—conflationists). Thus, 'aql/reason is rejected as the ultimate arbiter of the question what is to be considered Islamic and thus "legitimate" in the realm of Muslim political discourse. Nurcholish, for example, specifically within in the context of *aṣālah*/authenticity suggests to differentiate between "reason/rationality" and "rationalism":

"Rationality is very commendable, but rationalism is not because if you follow the idea and reason is the ultimate judge it is wrong of course."

Similarly, the *éminence grise* of Malaysian reformist Islam, Seyed Muhammad al-Attas ([1978]1993), argues against the modernists tendency of negating *taṣawwuf*, the role of mysticism in all spheres of Islam and of "rationalising" religion. Indeed, this tendency is very strong in contemporary *Maghrebī*/North African conflationist thought¹⁵⁶—stronger at least than in the *Mashreq*/Eastern part of the Muslim world.

2.3.3) "*naṣīḥah*/sincere advice" and freedom of expression in political affairs

The Koranic concept of *naṣīḥah* (or *munāṣaḥah*, alternatively) is praised as an "integral part of Muslim pluralist tradition".¹⁵⁷ In its original sense, it is commonly regarded as part of the overarching "*ḥisbah*/public order"-principle which itself is based on the cardinal Koranic principle of "*amr bi 'l-ma'rūf wa nahy 'an 'l-munkar*/commanding the good and forbidding the evil". Because *naṣīḥah* stresses the former—in contrast to *tawbīkh*/reprimand—, it is thus aptly translated with "sincere advice, friendly admonition, and friendly reminder" (Kamali 1994:36). Like *ijtihād* it is a collective obligation/*farḍ kafā'ī* of the community but it also entitles every individual Muslim to give sincere council to others according to a *hadīth*/prophetic saying.

¹⁵⁵ al-Bahī cit. from Kamali ([1989]1995:47)

¹⁵⁶ With the notable exception of Egyptian Ḥassan Ḥanafī. On al-Ghanūshī's decidedly anti-*taṣawwuf* stance, cf. Tamimi (1998:57). al-Jābrī maintains that the Arab-Islamic heritage had been 'infected' by Persian gnostic thought, *al-'irfān*—subjecting the former's value system to "*aṭ-ṭā'ah*/the obedience" [in fear of god, BJT] up to today, cf. his interview to the Moroccan periodical *al-Muqaddamāt/Prologues* (1997) no. 10, p. 48 (Arabic part). '*Ṭā'ah*/obedience' to the infallible Leader (*al-imām al-ma'sūm*), is also the paradigm under which the Iranian "*velāyat-e faqīh*/Trusteeship of the Jurist" is perceived in the Arab world, cf. e.g. W. Kawtharī's: *Thalāthah 'az-manah fī mashrū'a 'n-nahḍat 'l-'arabiyah wa islāmiyah* ("Three Eras of the Arab-Islamic Renaissance Project", extract from Kawtharī 1999, cf. references) In: *al-Mustaḥillah* (London) June 22nd, 1999, p. 9. On the pathological effects of *ṭā'ah* on contemporary Muslim society cf. similarly Moroccan sociologist F. Mernissi (1996:213f).

Both Kamali and Asad stress *naṣīḥah*'s foremost function of expressing one's opinion in political affairs freely. By also emphasising *naṣīḥah*'s constructive nature, both authors insist on its distinction from mere "political opposition" (for opposition's sake) or (destructive) "criticism" in liberal societies. *Naṣīḥah* is a potentially face-saving mechanism of dealing with plurality, since it must not partake in "exposing the privacy and personal weaknesses" of people and is best given "being aware of the suitability of the occasion, the time, and place...." (Kamali 1994:39). *Naṣīḥah* underlies much less formal restrictions than *ijtihād* according to Asad, since it is not restricted to "the educated and enlightened few":

"This is not a criticism that anyone coming from the outside, a total stranger, say, armed with a fine sense of logical argument and a set of universal moral principles, can carry out. So it is quite different from the notion of abstract and generalized criticism that has to be confined to the enlightened, literate members of a polity."

Furthermore, *naṣīḥah* does not only constitute a right to criticise the political regime but an obligation. Clearly departing from the general—even moderate conflationist—consensus Kamali (1994:41) holds non-Muslims to be entitled to participating at *shūrā*—except for matters of direct bearing on *ʿaqīdah*/faith, like the *ʿibādāt* (cf. supra 3.2.2).

Not only the theory, but also the practice of *naṣīḥah* in contemporary Saudi Arabia is praised by Asad. According to him, *naṣīḥah* proved very flexible. Being closely connected to the social conditions and the emergence of the modern Saudi state, both the purpose of *naṣīḥah* and its scope within the (religious) discourse of the ruling sect, the Wahhābīs, varied significantly corresponding to the change of those conditions. While Asad upholds that *naṣīḥah* will in the future remain distinct from any liberal notion of public political deliberation, he admits a more or less deep engagement not only of the Wahhābī but all contemporary Muslim discourse to the "Western tradition", on the other.¹⁵⁸

Current Iranian president Khātāmī also encourages public criticism though he argues vice versa. While maintaining the distinctness of 'religious societies' (such as the Iranian one), compared to contemporary Western societies, Khātāmī is nevertheless positively impressed by liberal political thought from the West, and from the US in particular. Since he is still firmly rooted in the Muslim intellectual tradition, Khātāmī is provided with the necessary legitimacy for his synthetic approach toward dealing with plurality: In his statements—whose immediate reference to the political struggle with the authoritarian fraction inside the Iranian power-structure is always to be taken into account—¹⁵⁹he courageously contends that social cohesion (*waḥdat-e mellat*) is not jeopardised by the freedom to express (individual) views and criticism. On the contrary, he says, it will "lead the society to a deeper and more structured sense of cohesion and unity."¹⁶⁰

¹⁵⁷ T. Asad in an interview with Saba Mahmoud, cf. *Contested Politics* (Stanford) vol. 5 (1996) no. 1 <<http://shr.stanford.edu/shreview/5-1/text/toc.html>>.

¹⁵⁸ "I can't see how any non-Western tradition today can escape some sort of an engagement with Western modernity. Because aspects of Western modernity have come to be embodied in the life of non-European societies," in an interview with Saba Mahmoud, cf. *Contested Politics* (Stanford) vol. 5 (1996) no. 1 <<http://shr.stanford.edu/shreview/5-1/text/toc.html>>.

¹⁵⁹ Cf. supra 1.2.4.

¹⁶⁰ The president's speech cited from the Iranian periodical *Ṭūs* August 27th, 1998 <www.persia.org/khatami/tous27aug.html>.

2.3.4) "Shūrā/consultation" vs. democracy?

Compared to the above mentioned concepts, "*shūrā*/mutual consultation" is perhaps the most important in the conflationist sub-discourse and yet the most contested one in the whole scope of Muslim political discourse. Other than the concepts mentioned above, *shūrā* does not strictly derive from Islamic jurisprudence but it is commonly regarded as equal to the five principal features of *dīn*/religion (cf. *al-ʿibadāt* supra 2.3.2).¹⁶¹ While in quantitative terms (frequency of reference) it is more pivotal to the discourse than any of the concepts *tawhīd*, *ijtihād*, *naṣīḥah* mentioned above, there is yet even less consensus on its procedural and institutional framework.

Genesis

In the original Koranic context (Sūrah 42:36) *shūrā* denotes the consultative body for the election of the prophet's successor. The procedure has already been modified significantly in the early history of Islam, precisely in the period of the *Khulafā' ar-rashīdūn*, the "rightly guided Caliphs". Since the reign of these first four successors of the prophet is generally included in the referential period (to varying degrees of obligation) for the conflationist discourse, and the appointment of each of the four followed different rules of *shūrā*/consultation, it is no surprise that today the concept is far from being coherent. *Shūrā* can denote virtually any form or institution of participation at any level of both private and public decision-making from governmental down to family affairs.¹⁶² In exactly this capacity, Kamali (1994:46) submits to regard *shūrā* "as a distinctive feature and hallmark of Muslim culture, and as a model for its socio-political development". Similarly, Sudan's Ḥassan at-Turābī considers it as an ideal "way of life" for all Muslims.¹⁶³

Explanations for the rise of *shūrā* as a principle governing the whole range of the conflationist (and consequently the anti-conflationist) discourse in recent years, are offered against the background of the "*azmah ad-dīmūqrāṭīyah*/crisis of democracy" at least in the Arab world after the 1967 *nakbah*/catastrophe (defeat against Israel), the Israeli intervention in Lebanon (1982-85) and the second Gulf war (1990/91), all of which exposed the weakness of the Arab regimes—regimes which heavily refused political participation. Based on such a merely negative balance sheet of coping with political plurality, *shūrā* is consequently transformed into a synonym for the call for political participation. The right (of the *ummah*, the Muslim community) to elect its leader can be regarded as the smallest common denominator of current *shūrā*-interpretations.

¹⁶¹ Cf. Kamali (1994:42), Tamimi (1993:22).

¹⁶² A whole session out of seven was devoted to the *shūrā*-principle in the Conference on Contemporary Islamic Political Thought and Civilization held on April 25th and 26th, 1998 at the International Islamic University (UIA), Petaling Jaya/Malaysia. Several speakers emphasised the all-encompassing nature of *shūrā*, cf. the conference report in *Orient* (Hamburg) vol. 39 (1998) no. 3, p. 391f.

¹⁶³ Cf. also El-Solh (1993:6) and M.F. Othman in Alhabshi/Hassan (1994:102).

"*Shūrāqrāṭīyah*/shūrocracy"

No one lesser than King Ḥassan of Morocco's nephew¹⁶⁴ asserted that *shūrā* in the mainstream of Muslim theorists (*Salāfi*) today is even synonymous with elections and parliaments. Other authors openly fuse *shūrā* and democracy to "*shūrocracy/shūrāqrāṭīyah*".¹⁶⁵

Conversely, in a "comparative analysis" of both systems, *shūrā* and democracy, Moten maintains that *shūrā*'s "consultative, consensual model that leads to co-operative decision-making" is diametrically opposed to Western democracy which "accepts conflict and compromise as a normal political process" (1997:15). Like at-Turābī and AbūSulaymān, Moten is thus convinced of *shūrā*'s superiority over present-day Western democracies.

Consultation vs. control

By way of contextual *ijtihād*/individual reasoning (cf. supra 2.3.2) and in clear disregard of *shūrā*'s rather weak institutionalisation in early Islamic history,¹⁶⁶ conflationists today agree that it is a ruler's duty to seek advice.¹⁶⁷ The consensus is wide on the assertion that *shūrā*-decisions cannot be vetoed by the executive power.¹⁶⁸ Art. 33 of the "Model of an Islamic Constitution" published by the Islamic Council of Europe (1983) even yields the power of impeachment of the leader/*imām* to the "*majlis ash-shūra*/consultative assembly" in case the former "intentionally violates the provisions of the constitution, or for a wanton violation of the Shari'ah."¹⁶⁹ Only because the source of (secular) power lies in the *ummah*/Muslim community it can be delegated to a ruler controlled by the representatives of the people. Political legitimacy is thus derived from the people, not from *sharī'ah*:

"Islamic rule is by nature democratic. Basically, because it derives its legitimacy from the people and, if people withdraw their support, it loses its right to remain in power."¹⁷⁰

Unlike *ijtihād*, which is based on individual *ra'y*/opinion and is thus highly fallible, *shūrā* as a collective endeavour may not only refer to the temporal-political/*siyāsī* realm. It may also address the religious/*dīnī*-sphere because its results are considered much more reliable.¹⁷¹ Indeed, *shūrā* is conceived of as the "divine order",¹⁷² or alternatively, as *bāb min al-abwāb*

¹⁶⁴ Hichem el-Alaoui: Etre citoyen dans le monde arabe. In: *Le Monde Diplomatique* (1995) no. 7, p. 11.

¹⁶⁵ Cf. Yazbeck Haddad (1995:18).

¹⁶⁶ Cf. authoritatively Djaīt (1989:73ff) on the historical background. Historians like M. al-Faruque or S. Mohamed/UIM, Malaysia are reluctant with regard to the application of the traditional *shūrā*-concept to today's societies. Cf. an-Na'im (1989:79f) for a critique from a juridico-political perspective.

¹⁶⁷ Kamali (1994:42f), Ghannouchi (1993:55), political scientist al-Alkim from the United Arab Emirates in Tamimi (1993:83), cf. also an overview in Yazbeck Haddad (1995:13ff).

¹⁶⁸ al-Alkim in Tamimi (1993:81), al-Ghannouchi—based on al-'Awwā (1993:71). This question pertains to the concept of *muḥāsabah*/accountability, cf. Moten (1996:121) also asserting that the (state) "*amīr*/leader" must adhere to the conclusions of the *shūrā*. Kamali, however, leaves the matter formally open to yet another effort in *ijtihād* (1994:45).

¹⁶⁹ Cf. Moten (1996:123, text of the document on 173f).

¹⁷⁰ Al-Ghanūshī in his interview to *al-Ahrām Weekly* (Cairo) (1998) no. 409 <www.ahram.org.eg/weekly/1998/409/debate.htm>.

¹⁷¹ Cf. Kamali (1994:44).

¹⁷² Cit. al-Alkim in Tamimi (1993:81).

'ilā 'l-ḥurriyah/"door of the doors to freedom"¹⁷³—even as a "collective endeavour for seeding an *objective truth*."¹⁷⁴ Such is not necessarily achieved by decision-making processes in which merely the strongest fraction prevails. Moten (1997) therefore deems *shūrā* superior to (his conception of) Western-style parliamentarism. However, with regard to the mechanisms of everyday decision-making, he concedes voting as a legitimate measure, based on AbūSulaymān, in questions that do "not concern matters of justice but... a case of preferring one to the other".¹⁷⁵

The most ample difference between *shūrā* and parliamentarism lies in that the former can not—at least not openly—acquire legislative functions, particularly not so as injunctions from the *sharī'ah* are concerned:

"...Muslims can consult each other about matters in the Shari'ah regarding the correct meaning of a particular clause and correct observance of it in order to fulfil its purposes; but they cannot confer together with the purpose of replacing or altering in any manner the ruling or decision of Allah and His prophet by their own conclusions."¹⁷⁶

It is the essence of Muslim conflationist worldview to regard the ultimate source of all law as divine. Thus law cannot newly be "created" as in secular legislation, it can only be "extracted" from the *sharī'ah* or, as al-Ghanūshī (1993) holds, be "enacted".¹⁷⁷ So, for good reasons, contemporary conflationists tend to circumvent the problem of legislation by stressing the procedural function of *shūrā*/consultation as an electoral principle and as a control-agency in the context of the executive's general *muḥāsabah*/accountability to the people.¹⁷⁸ The al-Azhar draft constitution of 1978 and the 1983 Islamic Council of Europe constitution therefore suggest a compromise between mere "law extraction" or even "law enactment" (*Rechtsschöpfung*) only, on the one side, and genuine legislation (*Rechtssetzung*) on the other. According to art. 21(a) of the Council's draft, the *majlis ash-shūrā* shall "legislate promoting the objectives of the Sharī'ah..." or alternatively, shall "legislate in accordance with the injunctions of the Sharī'ah" (art. 83.1, al-Azhar). Both of the formulations fall back behind the relevant stipulation of the Iranian constitution—as well with respect to their rigidity ('in accordance' or 'promoting the objectives') as with their reference to what is insinuated as a once-and-for-all established *corpus juris*, namely "*ash-sharī'ah*". Somewhat more moderately, art. 72 of the Iranian constitution prohibits the Iranian *majlis-e shūrā* (parliament) to "enact laws contrary to the usual and ahkam [morals i.e. lat. *ius* as opposed to *lex*, BJT] of the official religion of the country" and, alternatively, laws contrary to the secular constitution.¹⁷⁹

¹⁷³ W. Kawtharī: Thalāthah 'azmanah fī mashrū'a 'n-nahḍat 'l-'arabiyah wa islāmiyah ("Three Eras of the Arab-Islamic Renaissance Project", extract from Kawtharī 1999, cf. references) In: *al-Mustaḳillah* (London) June 22nd, 1999, p. 9.

¹⁷⁴ Moten (1997:16, emphasis original).

¹⁷⁵ Moten (1997:15).

¹⁷⁶ Cit. Doi (1997:19).

¹⁷⁷ Cf. similarly al-ALKim in Tamimi (1993:81).

¹⁷⁸ Moten (1996:101f, 120-25), Kamali (1994:41-46), al-'Awwā (1993:70-72).

¹⁷⁹ Cf. the official constitutional text in English from the website of the Iranian government <<http://www.salamiran.org/IranInfo/State/Constitution/articles/a072.html>>. Cf. supra 1.2.4 on the role of the Guardian Council in overseeing this prohibition. On the differentiation of *ḥukm* (pl.: *aḥkām*), i.e. *ius*, from *qānūn/lex*, cf. Schumann (1999:45f).

Conditions and constraints

Also unlike the procedure of *ijtihād*, the conditions which have to be met in order to launch *shūrā* are much less clear.

Two main approaches concur on the question of who is eligible for *shūrā*:

a) An "élitist" *shūrā* consists of:

- the honourables, i.e. the representatives of the military, tribes and clans. The Saudi *majlis ash-shūrā*/Consultative Assembly is more modernist in this respect, since it includes professionals of all kinds, and representatives from the business world. Still, its members are hand-picked by the rulers.
- Or it consists of the jurists/'*ulama*', only.
- Alternatively, the former two options are combined (cf. e.g. al-'Awwā¹⁸⁰). A case in point is the Iranian *shūrā-ye negahbān*/Guardian Council whose non-jurist members have no say in the vote concerning the conformity of the *majlis-e shūrā*/parliament's (quasi-)legislation with the "usual and ahkam of the religion".

b) The emancipatory opinion follows the general recommendation that everyone who is (personally) concerned by a matter, should have the right to voice his view upon it, thus presupposing not only an unrestricted right of freedom of expression but in particular the freedom "if necessary, to criticise the government for the *maṣlaḥah*[/common good, BJT] and benefit of the community".¹⁸¹

A combination of a) and b) has been operationalised in the draft constitution of 1983 whose art. 20(a) requires that the members of the *majlis ash-shūrā* should be directly elected by the people, and art. 21(a) compels the members to seek the opinion "as necessary" from a Council of '*ulamā*'. The latter is then explicitly entitled to practice *ijtihād* (art. 65a).¹⁸² Like *shūrā*'s functional limitations concerning legislation, the terms of its composition have also been further refined by the Iranian constitution whose art. 62 stipulates: "The Islamic Consultative Assembly is constituted by the representatives of the people elected directly and by secret ballot."¹⁸³ A fair departure indeed, from the hand-picked *shūrā* as practised by the companions of the prophet, (which included men only, by the way).

3) Conclusions

Conventionally, Muslim reformist projects are assessed from an ideal deconflationist viewpoint.¹⁸⁴ While this secular outlook can be regarded as firmly instituted within the Muslim political discourse itself, it ultimately remains incompatible with the conflationist perspective (cf. supra 2.2). Because of this conceptual incompatibility, a *tertium comparationis*, an over-

¹⁸⁰ Cf. Müller (1996:132).

¹⁸¹ Kamali (1994:45f), cf. similarly Moten (1997:15).

¹⁸² According to art. 66 the council's composition and the qualification of its members shall be determined by law, cf. Moten (1996:181).

arching meta-level of analysis—topping the conflationist-deconflationist dichotomy—is logically impossible to establish. The only fertile assessment of the mentioned projects is therefore from a perspective based on the shortcomings of the current handling of plurality in both secular and synthetic political systems.

The empirical overview (cf. supra 1.2) illustrated the common failure of both the secular political system (Tunisia) to accommodate the conflationist challenge, and the synthetic political systems' failure (Morocco, Saudi-Arabia, and Iran) to accommodate the deconflationist challenge.

The plurality of approaches: from country-specific to methodologically orientated projects

The reformist approaches to the malaise (cf. supra 2.3) differ according to the specificity of the case: Tunisian al-Ghanūshī adapts to the country's secular orientation in that he is ready to have the Western (secular) political toils like elections and political parties adopted as a basis for the metaphysically informed public deliberation in the public sphere. Conversely—emerging from synthetic contexts Iranian Surūsh, and to a lesser extent Moroccan al-Jābrī, approach the problem of accommodating the deconflationist perspective by first establishing pluralism as a fact of Islamic worldview and history. From a perspective which insists on a more or less close connection between the sacred and the profane realm, the accommodation of political plurality necessitates that *profane* plurality be mirrored by plurality in the realm of *fanum* and in a more complex manner, namely on philosophical, ethical, and (eventually) metaphysical planes. This is the focus of conflationists' reformist thought and empirical analysis, rather than the elaboration of political projects or specific constitutional projects. Even otherwise conflationist authors readily admit that there is no historical model of an 'Islamic state' and, as the overview of reformist projects has illustrated, there is no unified 'Islamic' political thought, let alone a closed body of Islamic jurisprudence. Except for an-Nabḥānī's draft constitution from the 1920s,¹⁸³ the al-Azhar draft constitution of 1978 and the Islamic Council for Europe's 1983 constitution, few ventures have been undertaken to develop an institutional framework for the conflationist social and political utopia. One of the more recent and perhaps most pertinent examples, Moten's proposals for an "Islamic political system" (1996) merely refers to procedure (*shūrā*) and general principles (*tawḥīd*, *sharī'ah*), instead of elaborating institutional frameworks to attain the goals suggested there like *'adālah*/justice, *ḥurriyah*/freedom, and *musāwāh*/equality.

This operational and institutional void is unsatisfactory from the perspective of social and political science. However, by establishing a more or less radical plurality of interpretations of Islamic history and revelation, and by introducing it into the conflationist discourse as a genuine fact of intra-religious pluralism, more of a solid basis may be provided for the accommodation—or rather the defusing—of both, the conflationist and the deconflationist extremist attitudes in the long run. It is precisely the common thrust of most of the aforementioned reformist projects: the accommodation not only of 'trivial' differences of opinion, but

¹⁸³ Cf. the official constitutional text in English from the website of the Iranian government <<http://www.salamiran.org/IranInfo/State/Constitution/articles/a062.html>>.

¹⁸⁴ Preferably in the realm of human rights, cf. e.g. Bielefeldt (1998).

¹⁸⁵ On the revolutionary ideology and the draft constitution of the Jordanian Ḥizb at-taḥrīr/Liberation Party, cf. Taj-Farouki (1994).

rather, the determination of a mode for handling the 'irreconcilable entities' of conflationism and deconflationism in the public sphere, without giving in to either of the extremist attitudes—each of which produces the known pathological outcomes like the violation of human rights, in particular the infringement of the freedom of expression (cf. supra 1.2.5). A full reconciliation of both attitudes is logically infeasible in the sense that in the last instance there is only a choice between the epistemological models emerging from either anthropo-centered 'Athens', or theo-centered (rather: nomocratic) 'Jerusalem'. Still, in order to appease this already highly virulent and partially even manifest Clash within Muslim Civilisation, and in order to avoid its eruption in yet more places, it is important to understand that it was precisely the pursuance of these essentialist worldviews in the political arena—irrespective of the particular operational and institutional framework—which led to the contemporary crisis.¹⁸⁶

Reconciling the irreconcilable? Between hypocrisy and genuine innovation

Are modernist interpretations of concepts like *tawḥīd*, *ijtihād*, *naṣīḥah*, and *shūrā* capable of handling this radical plurality of worldviews? Trying to reconcile the irreconcilable, does that invite for phoniness at the operational level and for mere symbolical politics of the kind Gellner observed?

"What strikes observers is the curious combination of religious moralism and cynical clientilism... It is as if the society's moral requirements were adequately met by the fact that the state enforces, or at least does not violate, *the Law*..."¹⁸⁷

It is true that any political or social project formulated outside the semantic realm of Islamic terminology and thought (reference to the *Koran* and/or *sunnah*) would not fit properly into the accommodative concepts or procedures mentioned above (cf. 2.3). Few Muslim reformists dare to openly question the authority of *sharī'ah* in principle. However, apart from the fact that there is a broad variety of interpretation of *sharī'ah*'s stipulations available, recent¹⁸⁸ and not so recent historical research uncovered that even undisputed limits set up by the *sharī'ah* have always de facto been systematically transgressed while their obligatory character has not been invalidated in principle:

"...Islamic law is conscious of its character as a religious ideal;... it takes the corruption of contemporary conditions for granted... Islamic law is to some extent content with mere theoretical acknowledgement."¹⁸⁹

Since "history" figures and will in the foreseeable future not cease to figure as a strong point of reference in the conflationist political sub-discourse, the question arises, whether contemporary (as opposed to bygone) societies could peacefully cope with a merely "ideal" rule of law, while important (secular) public affairs would rest largely outside of *sharī'ah*'s scope? To which extent can semantic elaborations suffice to cover up the incoherence of applying the *sharī'ah* in contemporary contexts or, to put it more provocatively, is there a point of no return after which the rupture with the *sharī'atic paradigm* must openly be admitted as the final "defeat" of the conflationist worldview?

¹⁸⁶ On the pitfalls of essentialist worldviews cf. supra 2.1 and the profound critique of al-Azmeh (1993).

¹⁸⁷ Cf. Gellner (1994:27f), emphasis original.

¹⁸⁸ Simonsen/Toll (1995).

¹⁸⁹ Cit. Schacht (1966:199).

The practice of today's regimes in the Muslim world (both 'secular' and 'synthetic') supplies two rather contradictory insights: Profane concerns have regularly been dressed up "Islamically" (by way of *fatwā*—issued by state-employed *‘ulamā*) mostly devoid of any previous broad public deliberation which could determine both the extent of popular support and their value from an ethical viewpoint. So, on the one hand, the mere employment of religion on the part of autocrat rulers only furthers the bigotry of the latter vis-à-vis the citizens and the hypocrisy of political debate on policy issues in general. Apparently, this strategy tries to avoid additional ideological polarisation of an increasingly politicised society. However, the examples of both Egypt and Algeria inform us that this half-heartedly bowing to extremist demands in some policy issues had not foreclosed (if not nurtured) the rise in militancy of Islamist movements. This is due to the fact that—in order to stay in power—governments fail by denying the respective protagonists a regular participation in political life, to reveal the latter's responsibility vis-à-vis the people who are affected by those policies. On such an empirical background Gellner's assessment holds true:

"The expectation of some additional Civil society, which could hold the state to account, on top of the *Umma* defined as a shared commitment to the implementation of the Law, would seem almost impious, but in any case unrealistic. The state can be called to account for violation of divinely ordained Law, or for the failure to implement it, but not for some additional requirements imposed by the popular as opposed to the divine will... Here we possess a viable... social form, an absolute moral community, which seems to work tolerably in a modern or quasi-modern context, and which accommodates itself without too much discomfort to what are for us political imperfections..."¹⁹⁰

Quite conversely to this resigned outlook, the main thrust of contemporary reformists is precisely the demand for broader political participation, co-operation with and even inclusion in the political process. Consequently, the call for 'accountability/*muḥāsabah*' falls back onto Muslim activists themselves. And indeed, we do possess empirical support for this argument: Embracing the protagonists of Islamist movements from the side of the government, i.e. the 'Integration of the Integrists' eventually led to the peaceful deflation or, to remain precise, to the 'deconflation of the conflationists' e.g. in the Jordanian case since 1989.¹⁹¹

Broader political participation at all levels and furthering of the freedom of expression may also help to avoid typical pitfalls in the process of modernisation of society. The modernisation of law must be regarded as the central motor of this process. The fact that the refurbishment of Islamic law from within its own tradition had been blocked or else not been implemented is just the more deplorable since its mere substitution had rendered illegitimate the whole project of modernisation for the lack of authenticity. The tension between innovation on the basis of diverse Islamic traditions by *takhayyur*/choice and *talfīq*/fusion of (legal) opinions or *ijtihād* on the one hand and borrowing from completely different legal norms on the other side is not only hypothetical: Most law systems in the Muslim world have at one time or another been completely supplanted by secular laws of foreign origin with the exception of the synthetic creations of the "Anglo-muhammedan law" based on the Ḥanāfī-school in South-Asia and the "Droit musulman algérien" which was created and applied (mainly in Tunisia) by the French during the occupation of North-Africa on the basis of the Mālikī-

¹⁹⁰ Cf. Gellner (1994:28).

¹⁹¹ Cf. Krämer (1994), Robinson (1997).

school dominating there.¹⁹² It is significant in this context, to remember how very little resistance was advanced from the side of the orthodox *‘ulamā’* when, e.g. between 1850 and 1863, *sharī‘ah* was supplanted by completely new laws in the Ottoman Empire. However, some five decades later the resistance was strong against the codification of Ḥanafī law in 1917. Why? The latter entailed that a choice had to be made between those parts of *sharī‘ah* which deemed to suit that time, and others that did not. The complete substitution, on the contrary, could have left the ideal of revealed law untouched and the hope persisted "to save it up for better times to come".¹⁹³ Therefore, from a historically informed perspective, projects such as al-Ghanūshī's or Surūsh's, which are aimed at 'democratising' the interpretation of *sharī‘ah* and at publicly determining the extent of revelation's pertinence for the political sphere can be considered both appropriate and 'up-to-date'. It immediately addresses the deficient popular and religious legitimacy of political rule in the contemporary Muslim world. Al-Ghanūshī explicitly attributes the right to choose from policy options which are ethically informed by religious interpretation to the people (as opposed to *‘ulamā’* or 'the state', only) thus equally entitling the electorate to revise these options in the last instance. This must be considered innovative, compared to both the historical practice of interpretation through the *‘ulamā’* in the Sunnī-world, and likewise the (modernist) Shī‘ī practice which has been institutionalised e.g. in the Iranian constitutional system by the "council of *‘ulamā’/shūrā-ye negahbān*".¹⁹⁴

Also with reference to *aṣālah*, the problematique of authenticity, reformist approaches from within the respective tradition of thought may prove more effective in the process of modernisation of society than the supposedly clear cut with the legal heritage while hypocritically preserving autocratic rule. The fact that even the more subtle Muslim reformists are denounced as 'apostate' by militant Islamists (e.g. Abū Zayd), or alternatively 'fundamentalist' by authoritarian secular regimes (e.g. al-Ghanūshī), that they are forced into exile (al-Ghanūshī, temporarily Surūsh) or, in some cases, put to death (Sudanese Maḥmūd M. Ṭāhā),¹⁹⁵ suggests that the respective rulers of both, secular and synthetic political systems, fear even those rather abstract reformist projects for their very normative persuasiveness and their potential popular credibility—against the background of the general lack of all legitimacy which most contemporary political systems in the Muslim world suffer from.

De-essentialising 'tradition' vs. 'modernity', 'secular' vs. 'fundamentalist', 'authentic' vs. 'imported': pre-requisites for the accommodation of plurality

Most of the reformist authors mentioned above, either expressly or at least implicitly acknowledge the qualitative difference in the condition of contemporary as compared to bygone societies. Nevertheless a distinctness of Muslim societies as compared to liberal Western societies is maintained in general. But because of the profound transformation of the

¹⁹² Cf. Schacht (1966:94-111).

¹⁹³ Cf. Edge 1995.

¹⁹⁴ Cf. supra 1.2.4.

¹⁹⁵ Despite denying eternal authority to the Medinese part of revelation, Ṭāhā had even affirmed the validity of the *sharī‘ah* (including *ḥadd*-penalties) for his reformist project of a 'Second Message' in Islam (based on the Meccan *Sūrah*s, only), cf. Taha (1987:74,102). He was nevertheless declared apostate by a Saudi *fatwā* and consequently put to death by the Sudanese government in 1985!

former on social, economic and cultural planes, the normative challenge is considered far too complex to be answered by the mere reference to the 'Golden Age' of Islam.

Instead, the contemporary Muslim reformist discourse as depicted here contributes to 'de-essentialise' the established notions like 'modernity' and 'tradition', 'Islam' and 'the West' with their respective semantic and historical heritage, thereby encouraging a radical plurality of worldviews. Iranian president Ayātullāh M. Khātāmī has been introduced as perhaps the most prominent personality in point. He bids intellectual endeavour to be "equipped with both critiques, the critique of [Western] modernity and the critique of [non-Western, BJT] tradition."¹⁹⁶ Apparently not all conflationists consider the 'West' a holistic entity. Rather, there is a differentiated view of Western political reality disjunct from Western political thought.¹⁹⁷

Furthermore, the critique of conflationist positions with regard to pluralism, not as usual from the deconflationist/secularist pole of the Muslim discursive spectrum, must be considered as an utmost courageous task. The most important achievement is the fact that the conflationist perspective has thereby gained a fair degree of diversity without losing its distinct 'Islamic' frame. Under the presumption that such a plurality of views is not a problem, but rather part of a larger *unité de problématique*—embedded into issues such as the questions of authenticity, political participation, social justice and freedom—a unity of Islamic thought (*unité de pensée*) on the modern condition of Muslim society can be maintained (Jabri 1995:62f). Against this background, it seems justified to speak of a distinct Islamic modernity.

It is to be remembered, however, that some of the important contributors to this discourse live in exile (Arkoun, Abū Zaid, temporarily Surūsh, al-Ghanūshī). This fact, far from putting their claim on authenticity or their potential success in question, only underlines the urgency of coming to terms with the plurality in Muslim societies, by transforming either nominally 'Islamic' or 'secular' authoritarian regimes into de facto 'democratic/*shūrātic*' ones. Since this is the shared goal of both Muslim activists and secular opposition groups, perspectives on internal peace of Muslim societies are not so dim, provided the theoretical conflationist-deconflationist dichotomy ceases to be exploited as a means of de-legitimising the respective opponent *a priori*.

¹⁹⁶ Cf. his contribution to the German daily, Frankfurter Allgemeine Zeitung, August 1st, 1998 and analogously Arkoun's (1993) critique of the 'Hegemonic Reason'—both Western and Islamic!

¹⁹⁷ Contrary to the popular stereotype of the uniformed 'Islamic fundamentalist', conflationist intellectuals such as Surūsh and Khātāmī differentiate the various discursive traditions within Western thought, cf. e.g. al-Ghanūshī's differentiation of French from Anglo-Saxon secularist thought and his explicit warning to regard the contemporary West as a political entity. Like most approaches, however, his is methodologically not without flaws. Instead of comparing social reality in Muslim societies with social reality in Western ones, or Western political thought with Muslim political thought, he relates Western liberal societies with some envisaged Muslim society that may exist sometime in the future or may have existed in the past, cf. his interview with Tamimi (1998b:197, 215).

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